

JPC

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 12 OF 2018
WITH
CIVIL REVISION APPLICATION NO. 16 OF 2018

- | | |
|-----------------------------------|-----------------------|
| 1. Vishnu Baburao Kasar | ... Applicants |
| 2. Ashok Baburao Kasar | |
| 3. Kishor Baburao Kasar | |
| 4. Rajesh Baburao Kasar | |
| All r/o 24/B, Fule Colony, Dhule. | |

VERSUS

Bhikadas alias Buddhadas Motidas Bairagi ... **Respondents**

Mr. V. B. Patil, Advocate for the applicants
Mr. S. H. Tripathi, Advocate for Respondent

....
CORAM : GAURI GODSE, J.
DATE : 10th February, 2023

PER COURT :

1. These civil revision applications are filed by the original defendants/tenants for challenging the concurrent judgment and decree for eviction. The respondent/landlord had filed Regular Civil Suit No. 222 of 2008 for eviction of the defendants/tenants on the ground that the respondent landlord required the suit premises for his bonafide use, that the applicants/tenants had acquired suitable

alternate accommodation, non user by keeping the said premises locked, as well as on the ground that the applicants had changed the user of suit property from residential purposes to commercial purpose.

2. The learned 3rd Joint Civil Judge, Junior Division, Dhule, by judgment and decree dated 30th November 2010, partly decreed the suit to the extent of two rooms over first floor of CTS No.1876-E and room no.2 from the western side on northern side of Shani Mandir. The Trial Court decreed the suit on the ground of (i) non-user to the extent of the room besides Shani Mandir, (ii) acquisition of alternative place for business, (iii) change of user to the extent of two rooms on 1st floor, (iv) bonafide requirement of room no.2 beside Shani Mandir as the same in a dilapidated condition. The learned trial judge accepted the case of the respondent landlord with respect to change of user from residential to commercial with respect to two rooms situated on the first floor and the case of non user was also partially accepted with respect to one room.

3. Being aggrieved and dissatisfied by the decree of eviction, the applicants preferred Civil Appeal No. 48 of 2011. So far as the decree for bonafide requirement with respect to part of the property as well as for non user with respect to part of the property, refused by the

learned trial court, the respondent had preferred Civil Appeal No. 14 of 2011.

4. The learned Ad-hoc District Judge-1, Dhule by Judgment and Decree dated 12th September, 2017 dismissed Appeal No. 48 of 2011 preferred by the applicants and allowed Appeal No. 14 of 2011 preferred by the respondent. Thus, the first appellate court modified the decree passed by the trial court and directed the applicants to handover possession of the entire suit premises as described in paragraph no.3 of the judgment. Paragraph No.3 of the judgment describes the suit premises as follows:

(i) Shop in City Survey No. 1878-E alongwith two rooms over it, on first floor, with following abuts:

East : User and way to Kholgalli
 West : Part of City Survey No. 1878-E
 North : Room in City Survey No.1878-E
 South: Way to Shani Mandir from Kaman of City Survey No.1878-E

(i) Room NO.2, from western side on northern side of Shani Mandir in City Survey No. 1878-E, with the following abuts:

East : Room No.3 in possession of Dambir
 West : Room No.1 in possession of Dambir
 North : Maruti Mandir
 South: User and lane"

5. Being aggrieved by the decree of eviction passed by the both the courts, the applicants filed the present civil revision applications. Civil Revision Application No. 12 of 2018 is filed for challenging the Judgment and Decree passed in Civil Appeal No. 14 of 2011 filed by the respondent. Civil Revision Application No. 16 of 2018 is filed for challenging the Judgment and Decree passed in Regular Civil Appeal No. 48 of 2011 filed by applicants.

6. The learned counsel appearing for the applicants submitted with respect to ground of bonafide requirement that both the courts have failed to take into consideration that irrespective of the suit premises, the respondent has various other premises. With respect of point of non user, it was submitted that the evidence on record in fact shows that the applicants are very much using the suit premises. With respect to acquisition of alternate accommodation, it was submitted that the said findings of both the courts are contrary to the evidence produced on record. The learned counsel also submitted with respect to the ground of bonafide requirement that both the courts ought to have appreciated that except for stating with respect to requirement of the suit premises for the purpose of son of the

respondent, there was nothing produced on record as to in what manner the suit premises was required for bonafide requirement of his son.

7. The learned counsel for the applicants submitted that with respect to allegation of change of user, in fact, there was nothing on record to show that the suit premises was entirely given only for the purpose of residence, hence, there is no merit in the allegation that there is change of user. The learned counsel submitted that in the evidence on record would show that partially the suit premises was commercial premises and hence, there was no question of any change of user on the part of the applicants. The learned counsel also submitted that the point of comparative hardship is not taken into consideration by both the courts. He submitted that except the suit premises, there are no other premises available to the applicants and thus, both the courts ought to have held the ground of comparative hardship in favour of the applicants and refused to pass a decree on the ground of bonafide requirement.

8. The learned counsel appearing for the respondent submitted that perusal of the evidence on record would show that the applicants have, in fact, acquired alternate premises. There is evidence on record,

which shows that defendant no.4 has admitted that the applicants have shifted to some different residence and property card with respect to the same was also produced on record at Exhibit-27. Documents on record would show that the applicants have acquired the alternative accommodation and have also shifted their business to that alternate accommodation. The learned counsel further submitted that the suit premises were required for personal use for his son and the respondent has produced on record the documents at Exhibit- 26 which shows the qualification of his son and also shows that the premises is required for starting pharmaceutical or medical store for the purpose of respondent's son. The learned counsel submitted that in fact there was no such obligation on the part of the respondent to prove by any supporting documents with respect to the qualification of his son and that plain pleadings supported with oral evidence was also sufficient to support the contention that the premises were required bonafide for personal use of respondent's son.

9. The learned counsel submitted with respect to non user that, the evidence on record has been properly appreciated by the first appellate court and the court has come to the conclusion that the room near Shani Mandir is kept locked. The evidence also further supports the

case of respondent that there is change of user from residential to commercial premises. Thus, the learned counsel for the respondent submits that perusal of the judgment of the first appellate court would show that all the documents as well as evidence have been properly appreciated and the first appellate court has come to a conclusion that the respondent is entitled for a decree of eviction as prayed in the suit. Hence, the first appellate court has rightly confirmed the decree on all the grounds as pleaded by the respondent/landlord.

10. I have considered the submissions made on behalf of both the parties. The record of the civil revision applications show that the respondent has come out with a specific case with respect to bonafide requirement for the purpose of a shop for his son. With respect to non user as well as change of user, there are specific pleadings in the plaint supported by evidence. The documents produced on record considered by both the courts coupled with the admission given by defendant/applicant no.4 also show that the applicants have acquired the alternate accommodation and have shifted their business to the alternative accommodation.

11. Though the trial court had refused to accept the case on the ground of bonafide requirement for the purpose of shop premises on

ground floor, the first appellate court, after re-examining the evidence on record including documentary evidence and admissions given by the applicant no.4, has held that the respondent is entitled for a decree of eviction on the ground of bonafide requirement also with respect to the shop premises. The first appellate court has accepted the case of the respondent with respect to contention raised that the suit premises is required for the purpose of starting pharmaceutical store or medical store by the son of the respondent.

12. So far as the case of bonafide requirement is concerned, the reasoning given by both the courts are after properly appreciating the evidence on record. I do not see any reason to interfere with those findings recorded by both the courts. With respect to acquisition of alternate premises is concerned, there is specific evidence produced by the respondent that alternative premises has been acquired by the applicants. On the point of comparative hardship, the first appellate court has very specifically considered the case of both the parties and recorded a finding that considering the need of the applicants, their family and considering the need of the respondent, it was clear that if the decree of eviction is refused, the greater hardship would be caused to the respondent. The fact cannot be ignored that the evidence on

record shows that the applicants have already acquired the alternate premises. Hence, I do not see merit in the submissions with respect to comparative hardship being caused to the applicants. It is well established principle of law that when a suit is filed on the ground of bonafide requirement, tenant is under obligation to specifically plead and prove as to what efforts were made by the tenant to acquire alternative accommodation and why such alternative accommodation was not acquired by the tenant. In the present case, it is not even the case of the applicants that any such case was made out by way of pleadings and supported by any evidence. Hence, there is no question of deciding the point of comparative hardship in favour of the applicants, more so, because there is already evidence on record that alternate accommodation is already acquired by the applicants. Considering the well reasoned judgment passed both the courts, I do not find any reason to interfere with the same in the limited jurisdiction under Section 115 of the Civil Procedure Code, 1908.

13. Civil revision applications are dismissed.

14. At this stage, the learned counsel for the applicants request for extension of interim protection which was granted by this court on 15th November, 2022. The learned counsel for the respondent opposes

this request. Considering the fact that there was already interim protection granted, the execution of the impugned judgment and decree of eviction will be stayed for a period of six weeks from today subject to the applicants filing an undertaking in this Court that in the event, any favourable order is not granted by the Hon'ble Supreme Court, the applicants will handover the possession to the suit premises to the respondents. The undertaking will also state that they will not create any third party interest in the suit premises and or part with possession and that all the arrears of rent, if any, shall be deposited in the executing court within a period of four weeks from today and they will continue to deposit the same. It is made clear that if such an undertaking is not filed within a period of four weeks from today, the interim protection granted would stand vacated.

15. Needless to record that the respondent landlord will be entitled to withdraw the amount which is deposited by the applicants in the executing court.

[GAURI GODSE, J.]