

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION.

CIVIL REVISION APPLICATION NO. 425/2022.

1.M/s. Baldava & Company,
Registered Partnership Firm,
Occupation – Kerosene, resident of
471, West Mangalwar Peth,
Solapur.

2.Shri Durgaprasad Biharilal Baldava,
[since deceased deleted].

3.Shri Shyamsundar Durgaprasad Baldava,
age – 75 years, Occupation – Business,
resident of as above.

4.Shri Lalchand Durgaprasad Baldava,
age – 68 years, Occupation – Business,
resident of as above.

5.Shri Ramakant Durgaprasad Baldava,
age – 65 years, Occupation – Business,
resident of as above.

6.Sou. Shakuntala Purushottam Baldava,
age – 60 years, Occupation – Business,
resident of as above.

7.Parwatibai Anandlal Baldava,
age – 58 years, Occupation – Business,
resident of as above.

8.Radhsyam Ramdayal Bharadiya,
age – 65 years, Occupation – Business,

Rgd.

resident of 1572, Koreves, Barshi,
for self and POAH of applicants
No.1 to 7.

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APPLICANTS.**VERSUS**

Irappa s/o Chanmmallappa Patil,
Since deceased through L.Rs.

1A.Smt. Vimal Irappa Patil,
age – 66 years, Occupation – Household,
resident of 1572, Koreves Barshi.

1B.Shri Yogesh Irappa Patil,
age – 24 years, Occupation – Business,
resident of as above.

1C.Shri Shailesh Irappa Patil,
age – 21 years, Occupation – Business,
resident of as above.

1D.Jaymala w/o Chanbasappa Ligade,
age – 60 years, Occupation – Household,
resident of Thermal Colony,
Shaktikunj, E 12/69, Parali (v),
Parali, District Beed.

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NON-APPLICANTS.

S/Shri A. Kulkarni, a/w Akshay Kulkarni, Advocates
for Applicants.

S/Shri A. Tajne, a/w Y. Tajne i/b. Ms.K.P. Shinde, Advocates
for Non-applicants.
(through VC)

CORAM : VINAY JOSHI, J.

CLOSED FOR JUDGMENT : OCTOBER 25, 2023.
JUDGMENT PRONOUNCED ON : NOVEMBER 10, 2023.

JUDGMENT :

Failure of tenant in earlier two rounds of litigation caused him to approach this Court in revisional jurisdiction for setting aside a decree of eviction passed by the trial Court and confirmed by the First Appellate Court. Parties are referred throughout as 'landlord' and 'tenant' for the sake of convenience.

2. The subject property is comprising of a shop and godown premises situated at Barshi, Taluq Barshi, District Solapur, which is specifically described in paragraph nos. 1[a] and 1[b] of the plaint. The subject property was owned by non-applicant/landlord. It was let out to applicants /tenant for the purpose of carrying out business activities, particularly to run kerosene distribution business. It was let out to the tenant which is a partnership firm. There was no written lease agreement in between the parties. The tenancy month

commences on the first day of each month and ends on the last day of the respective month as per British Calendar. The monthly rent of the said premises was to the tune of Rs.187.50ps. inclusive of municipal taxes.

3. It is the case of landlord that the tenant has paid monthly rent of the suit premises till the end of May 1991 and thereafter did not paid the rent. The tenant has changed the partners of the firm and thus, changed the tenancy rights. The tenant has also ceased his kerosene business in the suit premises from the month of July, 1990, and the premises has not been used thereafter. The landlord also requires the suit premises for his personal use and occupation. On these grounds, the landlord has terminated the tenancy at the end of July 1991 by issuing statutory notice on 29.06.1991 and called upon him to deliver vacant possession of the suit premises. The landlord has also claimed arrears of rent, municipal and water taxes. Since the tenant has neither delivered possession, nor paid the claimed arrears, the landlord has instituted a suit for eviction on 02.11.1991 in terms of the provisions contained in Bombay Rents,

Hotel and Lodging House Rates [Control] Act, 1947 [hereinafter referred to as **“the Act”** for short].

4. The tenant resisted the suit claim by filing written statement. The tenant has specifically denied that he has changed the tenancy rights. It is denied that the suit premises has not been used from the month of July, 1990. The tenant also denied the bonafide requirement of the landlord for his personal use and occupation. Likewise, the demand raised by the landlord has been denied.

5. The tenant would submit that the suit premises is continuously used for running kerosene business. Though the supply of kerosene was stopped, however, the license for distribution of kerosene was not canceled. The tenant has maintained business accounts which shows that the kerosene business was going on. It is contended that the landlord has ample premises for his use and occupation. The landlord has acquired some other premises as well as has let out some of the premises and thus, the need of landlord is not genuine and bonafide. Moreover, by denying the arrears as

claimed, the landlord has urged for dismissal of the suit.

6. The trial Court has framed as many as 12 issues for consideration. The trial Court has decreed the suit on the ground of non-user in terms of Section 13[1][k] of the Act and on the ground of bonafide requirement in terms of Section 13[1][g] of the Act. Though the trial Court has held that the tenant is due of Rs.1037.50ps, however, decree was not passed on the ground of arrears in payment of rent. The trial Court held that the comparative hardship will be caused to the landlord in case of refusal in passing the decree.

7. The landlord is well entitled to recover the possession of the tenanted premises on account of arrears of payment of rent in terms of Section 12 of the Act, however, neither there was such specific pleading nor issue was framed. Issue no.8 framed by the trial Court was pertaining to certain arrears of rent, compensation, notice charges without specification, therefore, it is apparent that the eviction decree was passed only on the ground of non-user and bonafide requirement.

8. Being aggrieved, the tenant preferred Regular Civil Appeal No.120/2014 [Old R.C.A.No.8/2011], assailing the findings recorded by the trial Court. However, the Appellate Court has confirmed the findings of non-user, bonafide requirement, comparative hardship, and consequently dismissed the appeal vide its judgment and order dated 03.11.2022, which is the subject matter of challenge in this revision.

9. Heard learned Counsel appearing for the respective parties and gone through the entire record and proceedings. The landlord – Irappa Patil led evidence and filed various documents in support of his contention. On the other hand the tenant firm has led evidence of its manager and power of attorney holder namely Radhehyam Bharadiya. Both sides have produced certain documents in support of their contentions. Both have also filed written notes of arguments. The learned Counsel appearing for the tenant has assailed the concurrent findings recorded by the trial Court on both counts, namely – non-user and bonafide requirement. It is submitted that both Courts below committed an error in upholding

the ground of non-user in absence of specific evidence. It is submitted that the landlord has not specifically pleaded since when the premises remained unused. It is argued that the entire case of the landlord was revolving around a letter Exh.122 dated 24.09.1991 issued by the Tahsildar, Barshi informing the landlord that distributor has stopped supply of kerosene to the tenant.

10. It is submitted that in order to uphold the decree of evidence on the ground of non-user, the landlord has to establish that the premises has not been used without reasonable cause, for a continuous period of 6 months immediately preceding to the suit. According to the tenant, the letter Exh.122, conveys that the kerosene supply was discontinued from 24.09.1991, whilst the suit was filed on 02.11.1991. In other words he would submit that, the landlord failed to establish that the premises was not used for a period of 6 months preceding to the suit.

11. Both the Courts below concurrently held that the premises was not used from the month of July 1990, which is a legal requirement. Perusal of the suit notice [Exh.117 dated 29.06.1991]

bears a specific stand that from the month of July 1990, the tenant has ceased the use of suit premises. Thus, there was a specific stand about non-user from the month of July 1990. It reveals that though the letter Exh.122 was issued on 24.09.1991, however, it conveys that kerosene supply was already discontinued. It does not mean that kerosene supply was discontinued on 24.09.1991 itself. It is landlord's case that from July 1990, the premises has not been used for the purpose it was let out. The case of landlord is not only based on the letter Exh.122, however, the landlord led evidence on the point of non-user.

12. The learned Counsel appearing for the tenant has attracted my attention to the cross-examination of the tenant's witness. The tenant has virtually admitted the case of non-user in so many words. The tenant has admitted that they do not have documents in the form of order book, stock register for the year 1990-91 to show that the business was running. He admits that they were doing business of kerosene distribution only. It is admitted that the tenant – firm was doing kerosene distribution business at

Barshi, Osmanabad as well as Solapur. Particularly it is admitted that the receipts produced in the suit are relating to the business run at Osmanabad. On the top of it, the tenant admits that since 1988 they have no receipts to show kerosene distribution from Barshi branch. All these admissions coupled with the letter of Tahsildar has weighed both the Courts below to uphold the ground of non-user, which cannot be interfered under limited jurisdiction.

13. The learned Counsel appearing for the landlord has relied on the decisions of Supreme Court in case of (1) **Mohammad Shahnawaz Akhtar and another .vrs. 1st ADJ, Varanasi and others [2002] 9 SCC 375**, (2) **Yunus Ali .vrs. Khursheed Akram – [2008] 7 SCC 293** and (3) **Gandhe Vijay Kumar .vrs. Mulji @ Mulchand 2017 DGLS [SC] 749**, to contend that a finding of fact recorded by the Courts below cannot be interfered in revisional jurisdiction unless there is a perversity. There can be no two opinion that there is marked distinction between the powers to be exercised in Appellate and Revisional jurisdiction. Ordinarily the Appellate jurisdiction involves rehearing, while the revisional jurisdiction is quite limited.

If there is any perversity or the Courts below arrived on the finding without considering the material evidence or the finding is based on no evidence causing miscarriage of justice, then only the revisional Court can interfere. Normally in revisional jurisdiction, the High Court has to satisfy itself as to the correctness, legality or propriety of the decision. In the light of the scope of revisional jurisdiction, the entire evidence as well as finding recorded by both the Courts below have been reassessed. I am satisfied that the Courts below have properly appreciated the evidence on the point of non-user and arrived on a logical conclusion, and thus it calls for no interference.

14. The trial Court has also decreed the suit on the ground of bonafide requirement. Rather it is a concurrent finding of the Courts below. It is landlord's case that he requires the suit premises for his personal use and occupation. The learned Counsel appearing for the tenant would submit that during pendency of the suit, the original landlord expired, and therefore, without amending the suit pertaining to the requirement of legal heirs, a decree of eviction cannot be passed. In this regard reliance is placed on the decision of

Supreme Court in case of **Raghunath G Panhale .vrs. Chaganlal Sundarji and Co. - [1999] 8 SCC 1**. In the said decision, considering the earlier decisions in cases of Phoolrani and Shantilal, it has been ruled, that if the original plaintiff plead that it was his own need and that of family members, then cause of action would survive and suit can continue. In this regard it has been submitted that the landlord has not stated that the suit premises is required for his family and thus, in absence of necessary amendment by the legal heirs, the suit is not maintainable. As a matter of fact it is not necessary to go into the said aspect as both the Courts below materially erred in passing the decree of eviction on the ground of bonafide requirement without evidence.

15. The landlord has led evidence of Irappa Patil at Exh.114. Close examination of his evidence discloses that he has not uttered that he requires the suit premises for his use and occupation. Since both Courts below have decreed the suit on the ground of bonafide requirement, it has been specifically asked to the learned Counsel for the landlord to show the evidence of landlord on the point of

bonafide requirement. The learned counsel for the landlord conceded that landlord has not deposed that the suit premises is bonafidely required by him. However, the learned Counsel for the landlord would submit that while resisting the application for amendment by the tenant, the landlord has pleaded in reply that he requires the suit premises reasonably an bonafidely. Moreover, he has pointed out that while replying to the application for grant of stay in first appeal, the landlord has stated about his bonafide requirement. The said submission is totally devoid of merits. Neither the reply filed by the landlord to the application for amendment [which was rejected], nor the reply to the application for stay can be construed as evidence. Though landlord has pleaded in single line in the plaint that he requires the suit premises, however, mere pleading cannot take the shape of proof. Needless to mention that the term 'evidence' defined under Section 3 of the Evidence Act does not include the pleadings. In short there is no evidence about bonafide requirement.

16. Surprisingly the landlord has not uttered a single word in

his entire chief-examination, that he requires the suit premises for his use and occupation. True there are catena of decisions that the landlord's need cannot be doubted, the landlord is the best judge, but, unless there is evidence, everything cannot be presumed. Apparently the concurrent finding recorded by both the Courts below on the point of bonafide requirement is without evidence and therefore, a decree on the ground of bonafide requirement is unsustainable in law.

17. The learned Counsel appearing for the landlord would submit that the tenant has not deposited the rent during pendency of the revision petition and therefore, in terms of Section 12[3] of the Rent Act, he is liable to be evicted. Truly speaking the landlord though claimed certain arrears, however, has not specifically claimed decree on the ground of default in payment of rent. In order to obtain a decree of eviction on the ground of default in payment of rent, it is prerequisite that the landlord shall issue notice to that effect under Section 12[2] of the Act. On examination of the suit notice Exh.117, it is evident that there is no whisper that the tenant

is in arrears of rent, and on said count the tenancy has been terminated. Moreover, the trial Court as well as the first Appellate Court though framed the issue about arrears, however, has not passed the decree on the ground of default in payment of rent. No specific cross-objection has been raised by the landlord in first appeal. Therefore, the landlord's submission made in the revision to pass a decree on said ground is untenable.

18. On re-examination of entire material, it is evident that the concurrent findings recorded by the Courts below to the extent of eviction decree on the ground of non-user in terms of Section 13[1] [k] of the Rent Act is well maintainable. However, the eviction decree on the ground of bonafide requirement is unsustainable, since both Courts below have passed the decree without evidence. Since the landlord succeeds on the ground of non-user, he is entitled for evidence, and resultantly, the impugned judgment calls for no interference. In view of that, the revision petition carries no merit, and is dismissed. The tenant is directed to hand over the vacant possession of the subject premises to the landlord within a period of

two months from the date of uploading of this order. The learned Counsel for the landlord made a statement that during the aforesaid period, the landlord would not press for execution.

JUDGE.