

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.119 OF 2021

Ajay Mahasukhlal Shah

...Applicant

Versus

1. Chandrakant Babulal Shah
2. Ketan Chandrakant Shah
3. Sanjiv Chandrakant Shah
4. Hasmukh Bhogilal Shah

...Respondents

....

Mr. Rajendra M. Haridas for the Applicant.

Mr. Rajendra M. Chheda for Respondent Nos. 1 to 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT RESERVED ON : 08/11/2023

JUDGMENT PRONOUNCED ON : 29/11/2023

JUDGMENT :-

1. By this Revision Application filed under Section 115 of Civil Procedure Code, the Applicant has challenged the judgment and order dated 18/02/2020, whereby the Small Causes Court, Mumbai, dismissed the Appeal No.460 of 2015 and thereby confirmed the eviction decree dated 17/04/2015 passed in RAE Suit No.1585/2321 of 2006.

2. The Respondent Nos.1 to 3 were the Plaintiffs, and the Respondent No.4 and the Applicant were the Defendant Nos.1 and 2 respectively and shall be

hereinafter referred to as the 'Plaintiffs' and 'Defendants' respectively.

3. The subject matter of the Suit was Room No.9 admeasuring 319 sq.ft. situated on the 1st floor of Liladhar Mansion, 90 Gulwadi Mumbai. The said room shall be hereinafter referred to as the 'suit premises'.

4. The Plaintiffs are the owners of the suit premises. The case of the Plaintiffs is that Defendant No.1 was the tenant of the suit premises. By notice dated 17/05/2004, the Plaintiffs terminated the tenancy and called upon the Defendant No.1 to vacate and handover possession of the suit premises. The Defendant No.2 replied to the said notice stating that he is in possession of the suit premises which is being used for residential cum commercial purpose.

5. The Plaintiffs filed a suit for eviction interalia on the ground that the Defendant No.1 has sublet the suit premises to Defendant No.2 without prior written consent. The Plaintiff further claimed that he and 11 other members of the joint family are occupying about 400 sq. feet of carpet area, which is insufficient for their residence and raised a plea of bonafide and reasonable requirement.

6. The Defendant No.2 denied that the premises have been sub-let and claimed that the suit premises were let out to his father – Mahasukhlal and his brother Bhogilal Shah, who is the father of the Defendant No.1. Since 1954,

PRASANNA
PRADEEP
SALGAONKAR

Bhogilal Shah and his brother – Mahasukhlal Shah were occupying the suit premises for residence-cum-office use. In the year 1958, Bhogilal shifted to Ahmedabad and Mahasukhlal continued to be in possession of the premises. The Defendant No.2 claimed that he is an Income-tax practitioner and has been using the premises for residence-cum-office purpose. The Defendant claimed that the Plaintiffs have more than sufficient space available for their residence and denied the plea of bonafide and reasonable use of the premises. The Defendant No.2 also claimed that he has no alternate office premises and that the decree of eviction will ruin his career and will thus cause undue hardship. The Defendant No.2 also denied the other grounds viz. non-user and non-payment of rent, etc. The Defendant No.1 adopted the written statement filed by the Defendant No.2.

7. The learned Judge of Small Causes Court observed that total 11 members of the Plaintiff's family are occupying 03 rooms with total area admeasuring 400 sq. ft. The learned Judge observed that Jignesh Shah and Nikita Shah, the brother and sister-in-law of the Plaintiffs Nos.2 and 3 have no independent premises of their own. The learned Judge also took note of the fact that the children of the Plaintiff No.2 and 3 have since grown up and need their own space and privacy and further answered the issue of hardship in favour of the Plaintiffs. Based on these findings, the learned Judge by Judgment dated 17/04/2015 decreed the suit solely on the ground of reasonable and bonafide requirement.

8. Being aggrieved by the judgment, the Defendants preferred an appeal before the Appellate Bench of the Small Causes Court. The Appellate Bench confirmed the findings that the premises presently occupied by 11 members of the Plaintiffs' family are not sufficient for their use. The Appellate Bench has also held that Jignesh Shah and Nikita Shah do not have independent premises and that the grown up children of the Plaintiffs need their own space. The learned Judge observed that no hardship will be caused to the Defendant No.2 as he can easily get an alternate premises in the vicinity. Based on these findings, the Appellate Bench by Judgment and order dated 18/02/2020, dismissed the appeal (Appeal No.460 of 2015) filed by the Defendants and confirmed the eviction decree dated 17/04/2015 in R.A.E. No.1585/2321 of 2006. These concurrent decisions are challenge by the Defendants in this Revision filed under Section 115 of the Code of Civil Procedure, 1908.

9. Mr. Rajendra Haridas, learned counsel for the Defendants submits that the suit premises are used by the Defendants as residence-cum-office. Relying upon the decision in ***Tarachand Hassaram Shamdasani vs. Durgashankar G. Shroff and Ors. 2004 (Supp.) Bom C.R. 333***, he submits that the ground of bonafide and reasonable requirement is available only in respect of premises letout for residential purpose and not in relation to tenancy created for business or for composite tenancy i.e. business-cum-residence purpose. He further submits that the Plaintiffs had

suppressed the fact that they were occupying three separate rooms. He contends that it was obligatory for the Plaintiffs to disclose in the pleadings as well as in the evidence the fact that they owned other premises which were capable of being utilized for the requirement pressed into service and further to disclose and explain that inspite of ownership of other premises, the requirement pressed into service against the tenants would still survive. Learned counsel submits that having failed to plead and prove these material facts, the Plaintiffs are not entitled to recover possession of the suit premises on the ground of bonafide requirement.

10. Per contra, Mr. Rajendra Chheda, learned counsel for the Plaintiffs submits that the Plaintiffs had set up a clear and categorical plea of bonafide requirement of the suit premises for their personal use. He submits that the Plaintiffs have not suppressed any fact and that the decision in **Tarachand** (supra) is distinguishable on facts. Learned counsel for the Plaintiffs submits that both the courts below have returned concurrent findings in favour of the Plaintiffs on the issue of bonafide requirement and comparable hardship. He submits that there being no gross, palpable or jurisdictional error, there is no scope to interfere with the order in exercise of the revisional powers.

11. At the outset it may be mentioned that the contention of learned counsel for the Applicant that the Plaintiff cannot seek eviction on the ground of bonafide and personal requirement in respect of premises letout for business-cum-

residence purpose cannot be countenanced in view of decision of the Apex Court in ***Harbilas Rai Bansal vs. State of Punjab and Anr., (1996) 1 SCC*** and ***Ashok Kumar VS. Ved Prakash (2010) 2 SCC 264.***

12. Now coming to the merits of the matter, Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 which is relevant in the present case, provides for eviction of tenant on the ground of reasonable and bonafide requirement of the landlord. Sub-section 2 provides that no decree for eviction shall be passed on the ground specified in Clause (g) of sub-section 1 of Section 16 if the Court is satisfied that having regard to all the circumstances of the case, including the question whether other reasonable accommodation was available to the landlord or tenant greater hardship would be caused by passing the decree than by refusing it.

13. Section 16(1)(g) thus enables the landlord to recover possession of the tenanted premises, when the same are required for his reasonable and bonafide use. Whereas sub section 2 of Section 16 serves as a bar against eviction inspite of ground of bonafide and reasonable use having been made out, if the issue as to comparative hardship is answered against the landlord and in favour of the tenant. Needless to state that the burden of proving that the premises are reasonably and bonafidely required for his own use, as contemplated under Section 16(1)(g), is on the landlord. Whereas the burden of proving greater hardship as to deprive the landlord of his established right to seek eviction lies on the tenant. Reliance is

placed on the decision of the Apex Court in ***Badrinarayan Chunnilal Bhuthada vs. Govindrao Ramlal Mundada, (2003) 2 SCC 320.***

14. In ***Shiv Sarup Gupta vs. Maheshchand Gupta, (1999) 6 SCC 222*** the Apex Court has observed that :-

‘The phrase ‘required bonafide’ is suggestive of legislative intent that a mere desire, which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of sincere, honest desire, in contra distinction with a mere pretense or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. ...The Judge of facts should place himself in the armchair of the landlord and then asked the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the

tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting ride of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafide need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need and genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

15. The findings recorded by the courts below are required to be considered in the light of the aforesaid provisions of law and the pronouncement of the Apex Court. The pleadings as well as the evidence of the Plaintiff No.3-PW1Sanjeev Shah indicates that he, his father and brother i.e. Plaintiff No.1 and Plaintiff No.2 as well as his younger brother and their respective families are occupying three rooms. Room No.22 admeasuring 75 sq. ft., on the second floor is occupied by his father, Room Nos.27 and 28, on the third floor are occupied by him and his brother i.e. the Plaintiff No.2 and their respective family members. The total area of these three rooms does not exceed 400 sq.ft. He has deposed that his brother-Jignesh and his wife have no independent accommodation. PW1 has deposed that the area which is presently in their possession is not sufficient to accommodate the three families and that there is no privacy due to shortage of space.

16. The evidence adduced by the Plaintiffs amply proves that they and 11 other members of their family, whose names are disclosed in the plaint are occupying the total area of about 400 sq.ft. The actual area of the suit premises has been disclosed in the plaint as well as in the affidavit in evidence. The mere fact that the plaintiffs had not specified the exact number of rooms or the area of the individual room would not amount to suppression of material facts.

17. PW1 has deposed that the premises presently in their possession are not

sufficient to accommodate the large family and to satisfy their need or to meet their requirements. Apart from a bare denial of the statement that the premises are required by the Plaintiffs for their reasonable and bonafide use and the statement that the Plaintiffs have more than sufficient premises, there is absolutely no evidence on record to prove that the need of the Plaintiffs is not genuine or bonafide. The Plaintiffs have a large family consisting of more than 11 family members. The children of the Plaintiff Nos.2 and 3 have since grown up. These grown up children should have enough space and privacy to devote their time to studies, without any disturbances.

18. The proven fact is that the need of the Plaintiffs for additional accommodation is genuine, honest and conceived in good faith and thus reasonable and bonafide. In such circumstances, challenge to the finding rendered by the courts below on the issue of bonafide and reasonable need of the premises cannot be countenanced for the simple reason that the landlord is the best judge of his residential requirement and the tenant cannot dictate terms to him as to how he can and how he should adjust in the available premises. As held by the Apex Court in ***shiv Sarup Gupta*** (supra) if the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy.

19. The evidence of DW1-Hasmukh Bhogilal Shah reveals that the

Defendant No.1 had left the premises in 1961-62 and that he is residing at Ghatkopar since last 20 years. DW1 has also admitted that he is residing in Room No.2 of Ramesh Vallabha Baug lane, Ghatkopar (east) since 1977. He has admitted that his election card is at the address 'T2, Nutan Sandesh B.D. Lane, extn Ghatkopar (East). He has admitted that it is an ownership flat, which is in the name of his wife. The aforesaid evidence falsifies the case of the Defendant that the suit premises are used for residential cum office purpose. The evidence on record reveals that the Defendant No.2, who is the only contesting party has an ownership flat as well as a tenanted room at Ghatkopar. Furthermore, it is not the case of the Defendant that no other office premises are available in the vicinity. In Mohd. Ayub and Another vs. Mukesh Chand (2012) 2 SCC 155 the Apex Court has observed that whenever the tenant is asked to move out of the premises, some hardship is inherent. But the hardship the landlord would suffer by not being able to occupy their own premises, despite reasonable and bonafide requirement would be far greater than the hardship likely to be suffered by the tenant for having to move out to another place. Such hardship can be mitigated by granting him reasonable time to vacate the premises, as to give him sufficient time to make alternative arrangement. In such fact situation, the findings recorded by the courts below on the issue of comparative hardship do not warrant interference.

20. It would be relevant to note here that the scope of Section 115 of CPC is limited. While exercising revisional jurisdiction, reappraisal of evidence can be

made only to ascertain whether the conclusion arrived at by the fact finding court is reasonable or not. The court, in exercise of powers under Section 115 of the CPC cannot interfere with the finding of fact merely because it does not agree with the findings recorded by the courts below. Having gone through the records and proceedings, in my considered view, the Trial court as well as the Appellate court has not committed any illegality or jurisdictional error in ordering eviction of the Defendants from the suit premises. Hence, no case is made out to interfere with the concurrent findings recorded by the courts below.

21. Under the circumstances and in view of discussion supra, the application is dismissed. The Applicant is given three months time to vacate the premises, to enable him to find an alternative premises.

. Civil Revision Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)