

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 205 OF 2022

Smt. Tara Dattatray Zole & Ors.

...Applicants

Versus

Sau. Leena Mukund Mhatre & Ors.

...Respondents

Ms. Smita Gaidhani for the Applicants.

Mr. R. S. Datar for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 22, 2023

P. C. :

1. By this Revision Application the challenge is to the concurrent findings of the Trial Court and the Appellate Court decreeing the suit for eviction. Learned counsel for the Respondent submits that he is only pressing the ground of bonafide requirement and as such, the evidence in that respect be considered.

2. The Respondent who is the original Plaintiff filed RCS No. 365 of 2006 seeking recovery of the possession of the premises on the ground of default of rent and bonafide requirement. As regards the bonafide requirement, the plaintiff pleaded that his family is growing and the

present accommodation is not sufficient for the residence of the Plaintiff and his family members. It is further pleaded that due to lack of space, there is no privacy and there are no separate rooms for the children and as such, the studies of the children are affected. It is pleaded that the family has sons and daughters of marriageable age and therefore, separate accommodation is required for them. It is pleaded that there are almost 12 members residing in about 850 sq. ft. area of the premises known as “Om Bungalow” and the actual area in usage of the Plaintiffs is about 450 sq.ft. It further pleaded that the Defendants have purchased spacious residential flat on ownership basis and the Defendant is not requiring the suit premises and has not been using the suit premises for more than six months. Subsequently, by way of amendment, paragraph No. 5A and 5B were incorporated pleading that there is increase in the number of family members of the Plaintiff as there are grand children born and as such, scarcity of accommodation is now acute. It is also pleaded that the Plaintiff No.6, who is the son, is of marriageable age and due to lack of space his marriage is getting delayed.

3. In the written statement, the case of the Defendant was that the Plaintiffs are residing in a bungalow. That in the suit building, the Plaintiffs are in possession of one flat consisting of two rooms and kitchen. It was also pleaded that the Plaintiffs have obtained possession of

one premises on the ground floor, however the same is not being used.

4. The parties went to trial and the Trial Court vide judgment dated 17th October 2016 decreed the suit and directed the Defendants to handover the peaceful possession of the property as against which the Regular Civil Appeal No. 133 of 2016 was filed which came to be dismissed vide judgment dated 25th November, 2021.

5. Heard Ms. Smita Gaidhani, learned counsel for the Applicants and Mr. R. S. Datar, learned counsel for the Respondents.

6. Ms.Gaidhani, learned counsel for the Applicants submits that subsequent to the decree of eviction, the premises have been demolished and as such, the requirement which was pleaded was not bonafide requirement. She would further submit that, it is an admitted position that the premises is dilapidated and thereafter the same has been demolished. According to her, Respondents have obtained possession of premises of other tenants and as such, the need is satisfied. She would contend that, the bungalow which is the current residence of the Respondents, is sufficient for the residence of the Respondents and their family members and the requirement was not genuine. She would further submit that the Respondents are affluent people and can afford to purchase alternate accommodation whereas, on the other hand, the

Applicant is an adivasi women and she does not have financial ability to purchase other premises.

7. *Per contra*, Mr. Datar, learned counsel for the Respondent submits that it is admitted by the Applicants that there are almost 25 people staying in the current premises. He points out the cross-examination of the Applicant that the Applicant is not aware about the area of the current residence of the Respondents. He would further point out the admission of the Applicant that he has acquired another premises for the purpose of residence of his family. He submits that on the ground of comparative hardship, the Respondents would suffer greater hardship.

8. Considered the submissions and perused the record.

9. The Plaintiffs have come with the case that there are more than 12 members in their family and as such, the premises in which they are correctly residing is insufficient to meet the needs of their family members. By way of amendment, the birth of the grand children has also been placed on record to indicate the acute scarcity of accommodation in the current residence. In the written statement, the case put forth by the Defendants is that the Plaintiffs are residing in a bungalow and the bungalow is sufficient for the accommodation of the Plaintiffs and in addition, the Plaintiffs have also acquired the premises of another tenant

which is in their possession, however the same is not being used. During the evidence, the case of the Plaintiff as regards the bonafide requirement has not been shaken. The Plaintiff No. 5 has examined himself and deposed about the need of his family members and that the current premises is not sufficient for the purpose of their residence. In the cross-examination, the witness has admitted that the premises of the other tenant has been obtained. He has further admitted that in the building where the suit premises is situated only one tenement is in their possession. In response to the suggestion given that next to the suit building, there are two three Galas which are in the possession of the Plaintiffs, he has deposed that in the said premises his uncle and other relatives are residing. He has voluntarily deposed that his family consists of himself, his wife, two children, mother, elder brother as well as the younger brother. In cross-examination he has further stated that in the suit building, there are about 12 tenants and on the ground floor, three Galas are given on rental basis. He has further admitted in the cross-examination that the bungalow is a ground+two floors and on each floor, there are three rooms. He has further deposed that in the said bungalow, his uncles and his cousins are also residing and only one portion of the bungalow is in their possession in which all his family members are residing. He has further deposed that his brother Samir has married.

10. From the evidence which has come on record, the Plaintiffs who are the landlords have established that the current residence is not sufficient to accommodate their family members. The Plaintiffs have established that the need for the suit premises is not mere wish or desire but a genuine and bonafide requirement inasmuch as, considering the number of family members of the Plaintiffs and the area of their current residences, the suit premises is genuinely required for the purpose of accommodating the Plaintiffs and their family members.

11. Learned counsel for the Applicants has laid stress on the fact that there was another tenanted premises of Mr. Chikane of which the Plaintiffs have acquired possession. It needs to be noted that the settled position in law is that the tenant cannot dictate the manner in which the landlord should reside and the landlord is the best judge of his requirement. The Applicants have not demonstrated that any efforts were taken to search alternate premises after the receipt of summons in the present suit.

12. On the issue of comparative hardship, the affluence of the landlord is sought to be emphasized. The burden of proving the bonafide need is upon the landlord whereas the burden is upon the tenant to prove the comparative hardship. Merely, because the tenant will suffer some hardship on account of eviction cannot be ground to deny the landlord of

the beneficial enjoyment of its own property. Pertinently, DW-1 has admitted that he has purchased another premises and DW-2 and DW-3 have admitted that their other brother is residing in Nashik. It has come in evidence that three daughters of Applicant No. 1 are married. In any event the comparative financial capabilities of the parties cannot be the sole ground for deciding the issue of comparative hardship. On one hand, the Plaintiffs who are the landlord seeks the suit premises for the growing needs of their family members which are almost 25 in number and on the other hand it has been admitted in the cross-examination that the Defendants have acquired another premises on ownership basis for the purpose of the need of their family members. It has also come on evidence that out of the four children of the original tenant three daughters are married. As regards the subsequent demolition of the premises is concerned, as held in various decisions, it is need of the landlord on the date of the institution of the suit which is required to be taken into consideration and the subsequent events can be taken into consideration if the need which is propounded by the Plaintiff-landlord at the time of institution of the suit is completely eclipsed by the subsequent event. Learned counsel for the Applicant has not been able to demonstrate that the subsequent event has completely washed out the Plaintiff's case. The Appellate Court has held that the suit premises is found to be in

dilapidated condition by KDMC. As such the subsequent demolition of the premises cannot assist the case of the Applicants.

13. In exercise of jurisdiction under Section 115 of the CPC, it is not demonstrated that the concurrent findings of the Trial Court and Appellate Court suffers from any jurisdictional error or from any material irregularity or illegality so as to warrant interference of this Court. Revision Application stands dismissed.

14. The Applicant is granted time of two months from the date of uploading of the order to vacate and handover the possession of the suit premises subject to the usual undertaking to be filed that the vacant and peaceful possession of the premises will be handed over within a period of two months as stated above. The undertaking to also state that during the period of two months, no third party rights will be created and the Applicant will not part with possession of the suit premises and that the time of two months will not be used for the purpose of challenging the order into the higher Court. The undertaking to be filed within period of two weeks from today.

(SHARMILA U. DESHMUKH, J.)