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

WRIT PETITION NO.4346 OF 2021

Vishram Yashwant Joglekar and Anr. ... Petitioners

Versus

Uddhav Nimba Kothawade (since deceased)

Through his Legal Heirs

a. Smt. Kalavati Uddhav Kothawade and Ors. ... Respondents

- Mr. A.R. Gole, for the Petitioners.
- Mr. Jaydeep S. Deo, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.

DATE : 10th MARCH 2023

P.C.:

1. Heard Mr. Gole, learned counsel appearing for the Petitioners and Mr. Deo, learned counsel appearing for the Respondents.

2. By the impugned judgment and decree dated 16th February 2021 passed by learned District Judge-3, Pune in Reg. Civil Appeal No.468 of 2016, decree of the learned Trial Court passed in Civil Suit No.385 of 2011 of dismissing the suit is set aside and decree of vacant possession has been granted. The learned Appellate Court passed the decree on the ground of bondfide requirement.

3. The main submission of Mr. Gole is that earlier Civil Suit No.51 of 2000 was filed on the same ground and the said suit was dismissed. The said dismissal was confirmed by the Appellate Court.

He submitted that the present suit bearing Civil Suit No.385 of 2011 cannot be filed on the same ground. He submitted that earlier suit was also filed for the bonafide requirement of the plaintiff's son to start the business. The present suit is also filed on the same ground and therefore, decree of possession should not have been granted. He further submitted that admittedly, the plaintiff's son is doing the business in the premises which is adjacent to the suit premises and therefore, there is no substance in the ground of requirement. It is the submission of Mr. Deo, learned counsel appearing for the Respondent that decree on the ground of bonafide requirement is validly passed by the learned Appellate Court.

4. Perusal of the pleadings, evidence on record and the judgment of the learned Appellate Court clearly shows that it has been established that the plaintiff's son - Tushar Kothawade was occupying the tin shed which is behind the suit premises. In the said tin shed, he is doing business of selling books. The said tin shed is unauthorized as Corporation has issued notice for removal of the said unauthorized construction. Therefore, by no stretch of imagination, it can be said that the plaintiff has failed to prove the bonafide requirement.

5. As far as earlier Civil Suit No.51 of 2000 is concerned, the case put up by the plaintiff in that suit is that his sons i.e. Tushar and Dinesh have completed their education and from the point of view of

their career, they want the suit premises for carrying on their business. It is admitted position that the earlier suit was dismissed. However, perusal of the plaint in the present case shows that in paragraph 5, it has been *inter alia*, stated that said Tushar is married and therefore, wants to expand his business and for that purpose, requires appropriate place and as there is no appropriate place, he has constructed the tin shed behind the suit shop and is doing business from the said tin shed. Therefore, it is clear that the requirement which has been pleaded in the Reg. Civil Suit No.51 of 2000 is different from the requirement which has been pleaded in Civil Suit No.358 of 2011. Said Tushar is married, and therefore, due to increase in family requires place for business. Therefore, there is no substance in the contention of Mr. Gole that, since earlier suit is dismissed and said dismissal is confirmed by the learned Appellate Court, the decree of eviction should not be passed.

6. As far as the bonafide requirement of the plaintiff's son is concerned, it has been established on the basis of the evidence on record. There is no ground to interfere in the order of the learned Appellate Court under extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. Therefore, Writ Petition is dismissed with no order as to costs.

(MADHAV J. JAMDAR, J.)