

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.521 OF 2019

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Smt. Vijayalaxmi Shivram Redij & Ors. ...Applicants

V/s.

Ravishankar Vijayshankar SharmaRespondent

Mr. Prashant Karande a/w Mr. Sudam Patil i/b Mr. Praful
S. Pawar, for the Applicants.

Ms. Snehal R. Modi, for the Respondent.

CORAM : MADHAV J. JAMDAR, J.
DATE : 19th JANUARY, 2023

P.C.:

1. Heard Mr. Prashant Karande, learned counsel appearing for the Applicants and Ms. Snehal R. Modi, learned counsel appearing for the Respondent.

2. The Applicants are the original Defendant Nos. 1 to 3 and the legal heirs and representatives of original Tenant-Late Shivram Rediz. By the present Civil Revision Application, the Applicants are challenging legality and validity of the impugned Judgment and Decree dated 24th August, 2012 passed by the learned Judge, Small Causes

Court at Bombay in R.A.E. Suit No.5 of 2009 as well as legality and validity of the Judgment and Decree dated 5th January, 2019 passed by the learned Appellate Court of Small Causes Court at Bombay in Appeal No.119 of 2012 in R.A.E. Suit No.5 of 2019.

3. The said suit was filed for eviction under the provisions of the Maharashtra Rent Control Act, 1999 *inter alia* on the ground of change of user, non-user and bonafide requirement. The learned Trial Court has held that, the suit premises was let out for commercial purpose, user of the same has been changed for the part of the suit premises and part is being used for the residential purpose and also held that, the Plaintiff has proved the reasonable and bonafide requirement and, that greater hard ship will be caused to the Plaintiff.

4. As far as the learned Appellate Court is concerned, the Decree as far as bonafide requirement as well as the finding regarding hardship is confirmed. The learned Appellate Court however, has not discussed the ground regarding change of user. However, learned counsel appearing for the Respondent states that, the Respondent-landlord is only seeking eviction on the ground of bonafide requirement.

5. As far as the bonafide requirement is concerned, the finding recorded by the learned Appellate Court is to the effect that, the Plaintiff is physically challenged person and his right part of body is paralyzed, his family consists of Wife-Lalita Sharma and his Son-Raj Sharma who are dependent on him. Therefore, the Plaintiff requires the suit premises reasonably for the purpose of his need for starting his own business which he intends to do with the help of his wife. Both the Courts have further held that, the Plaintiff is unemployed and made a living by doing odd jobs.

6. Even, it is the contention of Mr. Karande, the learned counsel appearing for the Applicants that, the Plaintiff is working as Pujari in a temple. Therefore, it is admitted position that, the Plaintiff is having no permanent source of income. Therefore, no illegality or irregularity is committed by both the Courts in decreeing the suit on the ground of bonafide requirement and that greater hardship will be caused to the Respondent if decree is refused.

7. Mr. Karande has failed to show that, the finding arrived at by both the learned Courts are not on the basis of evidence on record. The finding regarding hardship is also arrived at

on the basis of evidence on record. It has been recorded that, the Defendant No.2 is working in East Africa. It is also admitted position that, at one point of time, the Defendants formed partnership with one Jabbarsingh Addarsingh Rathod and the business was being conducted by said partnership firm in the suit premises. However, it is the contention of Mr. Karande that, the said partnership was not doing good business and, therefore, said arrangement was terminated.

8. In any case, it is clear that, hardship will be more to the Plaintiff than the Defendants and both the Courts have recorded concurrent finding on the said aspect. Therefore, there is no merit in the Civil Revision Application.

9. However, as the Applicants are conducting the business in the suit premises, 6 months time is granted to them to vacate the suit premises on the condition that, all the Applicants along with all adult members of their family occupying suit premises to file undertakings in this Court on or before 13th February, 2023, undertaking to this Court that vacant and peaceful possession of the suit premises will be handed over to the Respondent on or before 31st July, 2023

on the condition that, the Applicants pay to the Respondent an amount of Rs. **5,000/-** per month for the period from February, 2023 till 31st July, 2023 by depositing the same in the account of the Respondent.

10. The Applicants to pay the arrears with effect from January, 2019 till 31st January, 2023 on or before 30th April, 2023. The said amount is to be transferred by the Applicants directly in the Account of the Respondent [Account Number : **78080100001376**, Bank Name(Branch) : **Bank of Baroda** (Dr. Annie Beasant Rd. Worli), IFSC Code : **BARBODBWORL** (5th Character is Zero)]. The Applicants also to pay monthly charges on or before 10th of every month directly in the Account of the Respondent.

11. The Respondent is at liberty to withdraw the amount which has been already deposited by the Applicants.

12. The Civil Revision Application is dismissed in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)

Note: This order is modified by speaking to the minutes order dated 1st February 2023. The correction is shown in bold in paragraph No.9 at page 5.