



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 515 OF 2023
WITH
INTERIM APPLICATION NO. 15224 OF 2023
IN
CIVIL REVISION APPLICATION NO. 515 OF 2023

Deepak Chimanlal Mehta and Ors. ... Applicants.

Versus

Anjan Deviprasad Kejriwal ... Respondent.

WITH
WRIT PETITION NO.15514 OF 2022
WITH
INTERIM APPLICATION NO.15198 OF 2023

Anjan Deviprasad Kejriwal ... Petitioner.

Versus

Chimanlal K Mehta ... Respondent.

Mr. Vineet Naik, Senior Advocate alongwith Ms. Shreya Jha i/by Mr. Jaysh Mestry, for Applicant in CRA/515/2023 and IA/15224/2023 and for Respondent in WP/15514/2022.

Mr. Girish Godbole, Senior Advocate with Mr. Nirman Sharma i/by Ms. Kavita Shah, for the Petitioner in WP/15514/2022 and for the Respondent in CRA/515/2023.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : DECEMBER 07, 2023.

P. C. :

1. Heard Mr. Vineet Naik, learned senior counsel appearing for the applicant and Mr. Girish Godbole, learned senior counsel

appearing for the respondent.

2. The challenge in the Revision Application is to the order of the Appellate Bench of the Small Causes Court dated 20th June, 2023, reversing the Judgment of the Trial Court dated 5th February, 2022. For the sake of convenience, the parties are referred to by their status before the trial Court.

3. Briefly stated the facts of the case are R.A.E Suit No.1173/1883 of 2005 was filed for eviction and possession under Section 16(1)(b), Section 16(1)(c), Section 16(1)(g) and Section 16(1)(n) of the Maharashtra Rent Control Act, 1999. The suit premises is flat No.2 situated on the ground floor, Kejriwal House, 7, N. Gamadia Road, Mumbai-400026, admeasuring about 2800 sq.ft. The suit premises were let-out to the original-defendant (since deceased) vide tenancy agreement dated 10th September, 1965. It is pleaded that there is change of user of garage premises to that of the residence as the defendant's servant/driver was using and occupying the garage premises for their residence. That, the defendant has changed the dominant user of the suit premises from residential to commercial use by running several companies and carrying on commercial activities within the suit premises which are

let-out for the purpose of the residence.

4. It was further pleaded that the premises are reasonably and bonafide required for the plaintiff's family members comprising of his mother aged about 65 years, his wife, his son aged about 20 years and his daughter aged about 22 years. It was pleaded that the plaintiff's mother required an independent space for herself, as she would like to have a *pooja* room for herself and an independent living room to enable her to hold herself *sastangs*. That the daughter required independent space as she is working and required sufficient area to enable her to work with concentration. That the plaintiff's son was studying and required peace and quiet and an atmosphere conducive for study. That the plaintiff required his family members to reside close to him in the suit building. As regards the financial capability of the defendant, it was pleaded that the defendant is very wealthy man with immense resources and can very well afford to purchase a flat for his residence anywhere in Mumbai.

5. In the written statement, the defendant pleaded that the plaintiff's son and daughter are having independent income and in all probability would go away and stay elsewhere after their respective marriages. In the cross-examination of PW-1, the

description of the suit premises which has come on record is that the current residence of the Plaintiff admeasures 3000 square feet and consists of three bedrooms, hall, one lounge and dining room and kitchen. It was admitted that the son got married in the year 2011 and that one bedroom is occupied by plaintiff and his wife, second bedroom is occupied by his son and wife and third bedroom is occupied by his mother. It was further admitted that the son and daughter have independent income and that the daughter-Kavita is now residing in Delhi with her husband and they are permanently settled in Delhi.

6. Based on the admissions given in the evidence of the Plaintiff, the contention of Mr. Naik, learned Senior Advocate appearing for the Applicant is that the reasonable and bonafide requirement of the family members contemplated for seeking decree of eviction under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 has been materially satisfied. He submits that the admitted position is that the Plaintiff's flat is admeasuring about 3000 sq.ft. having three bedrooms and after the marriage of the daughter, the bedrooms are sufficient for the residence of the plaintiff and his wife, son and daughter-in-law and the mother. He would submit that as

such, the only requirement left was as regards the space for the *pooja* and the *sastang* for the Plaintiff's mother and according to him, the said requirement is a desire or wish and cannot be said to be an absolute need, so as to sustain a decree of eviction of the tenant from the suit premises.

7. He would further submit that as regards the comparative hardship as the original-defendant has expired the same cannot be pressed, however, his submission is that the bonafide requirement itself is not established and as such, the issue of comparative hardship does not arise.

8. The Trial Court has held that there is no cogent evidence to show that the requirements of the Plaintiff of the suit premises is reasonable and bonafide. There is no reasoning given to support this finding. After noting the requirement as pleaded by the Plaintiff, the Trial Court noted that the plaintiff is occupying an area of 3,200 square feet. However the Trial Court did not appreciate that the suit premises were sought for the growing needs of the grown up daughter and son of the Plaintiff and for the pooja room and satsang for his mother. The requirement of additional space to meet the needs of the daughter and son cannot be doubted. As regards the

requirement of the Plaintiff's mother, it has to be considered that she is an elderly lady and may require the space for her spiritual and religious pursuits. The needs of the Plaintiff's family members at the time of institution of the suit cannot be termed to be mere wish or desire. Even though the premises of the Plaintiff was admeasuring 3,200 square feet, the same consisted of only three bedrooms and with grown up son and daughter, the space was inadequate.

9. The Appellate Court has summarized the ground of reasonable and bonafide requirement and has summarized the same in paragraph No.28 of the impugned order which is annexed at page No.41 of the Petition which reads thus: .

- “a. the plaintiff has a growing family and the suit premises is required for the residence of his family members;
- b. the plaintiff's mother requires a room for herself for personal religious purposes (Pooja) and another additional room for congressional religious activities such as Satsangs and singing of devotional songs.
- c. Independent space for his daughter who is working and requires sufficient space to work at home.
- d. The son of the plaintiff is studying and he requires peace and quiet in order to concentrate.”

10. The Appellate Court has held that the requirement claimed

by the plaintiff is supported by the evidence and appear reasonable and true and that the requirement of the plaintiff's mother seems real and genuine. Based on this, the Appellate Court accepted the case of reasonable and bonafide requirement of the plaintiff and on the issue of the comparative hardship has held against the original-defendant.

11. R.A.E Suit has been filed in the year 2005 and the requirement pleaded at the time of the filing of the Application for ejectment of the tenant has to be taken into consideration. The position has been settled by the Apex Court in the case of ***Gaya Prasad vs. Pradeep Srivastava***, reported in ***(2001) 2 SCC 604***, wherein the Apex Court has held that the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. It therefore follows that it is not sufficient that the need has been overshadowed but what is required that the need has been completely eclipsed, inasmuch as, the requirement no longer survives.

12. In the present case, the requirement put-forth by the plaintiff was the growing need for additional space of the family

members. Admittedly, the suit premises is admeasuring 3000 sq.ft. having three bedrooms, one lounge, dining room and hall. The Applicant's son during the pendency has married and this Court is now informed that there is grand child. The marriage of the daughter and her shifting to Delhi cannot be stated to have completely satisfied the requirement of the daughter for space in her parents house. To assume so would mean that after the daughter's marriage, she no longer requires her own space in her parents house. In fact it is well known that the marriage of the daughters does not preclude the daughter from visiting their parents house frequently. During her visit, the Plaintiff's daughter will evidently require her own space and especially if she is accompanied by her husband. Even though it is sought to be suggested that occasional visit of the daughter would not amount to pressing need, I am not inclined to accept the same as in my opinion, the marriage of the daughter does not wipe out her bonafide need for her own accommodation in her parents house. Even though she is married, her requirement will still exist and it cannot be stated that the requirement is not bonafide and reasonable but a mere wish or desire.

13. In my view, the marriage of daughter has in fact increased

the need for the suit premises inasmuch as apart from the daughter and her husband, the extended family would be visiting and the premises would be insufficient for accommodating the extended family. The family admittedly is growing and as such, it cannot be said that there is no requirement for the suit premise. As regards the submission that the plaintiff's mother required additional space for *pooja* and *sastang*, it is now settled that the Court cannot dictate the manner in which the landlord has to use his premises. Viewed from that aspect, the requirement for spiritual pursuits as regards the plaintiff's mother considering the age of the plaintiff's mother cannot be stated to be a mere desire.

14. The other submission canvassed by Mr.Naik, learned Senior Advocate was that the provisions of Section 16(1)(a) materially differs from the provisions of Section 16(1)(n). Section 16(1)(a) provides that the landlord shall be entitled to recover the possession if the Court is satisfied that the tenant has committed any act contrary to the provisions of Clause (o) of Section 108 of the Transfer of Property Act, 1882. Whereas, Section 16(1)(n) provides that the premises have not been used without reasonable cause for the purpose for which they were let-out for continuous period of six

months. He would therefore submit that the requirement of Section 16(1)(n) is that the premises has not been used without reasonable cause for the purpose for which they have let-out for continuous period of six months, which requirement in the present case is absent. Although, the said submission was raised, there was no elaboration and neither the necessary evidence as well as the findings of the Appellate Court were pointed out, so as to substantiate the said submission. As such I am not inclined to consider the said submission.

15. The Revisional jurisdiction of this Court under Section 115 of Code of Civil Procedure has been invoked. In exercise of revisional jurisdiction the Court is not required to correct errors of fact however gross or errors of law unless said errors have relation to jurisdiction itself. The illegality or material irregularity refers to the manner in which the decision has been arrived at. The submissions canvassed does not indicate any jurisdictional error or any material irregularity or illegality. In view of the above, there is no merit in the Revision Application and is dismissed.

16. In view of the dismissal of the Revision Application, Mr. Godbole, learned Senior Advocate for the Respondent submits that

the connected Writ Petition does not survive for consideration. Accordingly the Writ Petition and the Interim Applications do not survive and stand disposed of.

(Sharmila U. Deshmukh, J.)

17. At this stage, Mr. Naik learned Senior Advocate seeks stay of this order for a period of eight weeks. The order is stayed for the period of eight weeks from the date of uploading of the order on the official website of Bombay High Court subject to an undertaking being filed by the Applicants within one week of the uploading of the order that in event, appropriate orders are not passed by the Apex Court within the period of eight weeks as stated above, the Applicant will handover the vacant and peaceful possession of the suit premises within a period of one week thereafter.

(Sharmila U. Deshmukh, J.)