

Pallavi

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

CIVIL REVISION APPLICATION NO.100 OF 2023

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Swarupa Anil Lodha

...Applicant

Versus

Rajani Ravindranath Pujari and Ors.

...Respondents

- Mrs. Hemangi Dattatray Pathare, for the Applicant.
- Dr. Uday P. Warunjikar, for the Respondent Nos.1 to 4.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 23rd JUNE, 2023**

P.C.:

1. Heard Mrs. Hemangi Pathare, learned counsel appearing for the Applicant and Dr. Uday Warunjikar, learned Counsel appearing for the Respondents.

2. I passed following order initially on 23rd June 2023:-

“1. The Applicant is tenant and by way of the present Civil Revision Application filed under section 115 of the Code of Civil Procedure, 1908 is challenging the legality and validity of the Judgment and Decree dated 22nd April 2014 passed by the learned 3rd Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune in Civil Suit No.332 of 2009 as confirmed by the learned Principal District Judge, Pune by Judgment and

Decree dated 18th April 2022 in Reg. Civil Appeal No.342 of 2014. The said suit was filed on the ground of arrears of rent, bonafide requirement and nuisance. The learned Trial Court decreed the suit on the ground of arrears of rent and bonafide requirement. The learned Appellate Court dismissed the Appeal and confirmed finding with respect to the ground of arrears of rent as well as bonafide requirement.

2. The reasoning as regards bonafide requirement is concerned both the Courts have concurrently found that the plaintiff was residing in flat of two rooms admeasuring 350 sq. ft. area. Mr. Sameer Pujari - elder son of the plaintiff is married and is residing along with his wife. The evidence on record shows that there is increase in the family of the said son. During the pendency of the Appeal certain documents were allowed to be produced on record as additional evidence. Said documents show that plaintiff – Surendra Pujari got married during the pendency of the proceedings. There is increase in the family members due to birth of child – Rayansh. On the basis of said evidence, both the Courts have found that in a flat of two rooms admeasuring 350

sq. ft. about six persons are staying and therefore, bonafide requirement of the Respondents is established. Both the Courts have also held ground of hardship in favour of the plaintiffs.

3. Ms. Pathare, learned counsel appearing for the Applicant although contended that the said findings are not in accordance with the evidence on record, however, both the Courts have concurrently held that the plaintiffs have proved bonafide requirement as well as the plaintiffs will suffer greater hardship. The said findings are in accordance with the evidence on record. While decreeing the suit on the ground of arrears of rent, the Courts below have inter-alia taken into consideration the fact that the defendant - tenant was not depositing rent regularly in the Court. Therefore, there is no substance in the Civil Revision Application as both the Courts have concurrently found that the plaintiffs have proved the ground of arrears of rent as well as bonafide requirement and the plaintiffs will suffer greater hardship than the defendant. As there is no substance in the Civil Revision Application, Civil Revision Application is dismissed however with no order as to costs.

4. Learned counsel appearing for the Applicant seeks stay of this order in the interest of justice. Eviction decree passed by the learned Trial Court as confirmed by the First Appellate Court be not executed for a period of three months.”

3. After I passed the aforesaid order dismissing the Civil Revision Application, Ms. Pathare, learned counsel appearing for the Applicant, after taking instructions from the Applicant, who is present in Court, states that she has instructions to withdraw the Civil Revision Application, if the period of two years is granted for vacating the suit premises. Dr. Uday Warunjikar, learned counsel for the Respondents, after taking instructions from the Respondents states that the Respondents are also agreeable for said arrangement on the condition that on or before completion of said two years’ period, the Applicant shall give vacant and peaceful possession of the suit premises to the Respondents. Respondent No.4 – Mr. Sagar Pujari is personally present in the Court and he has given said instructions to Dr. Warunjikar, on behalf of all the Respondents. Accordingly, the matter was kept back as parties expressed willingness to file Consent Terms.

4. After some time when matter was again taken up, Ms. Pathare, learned counsel appearing for the Applicants and Dr.

Uday Warunjikar, learned counsel appearing for the Respondents tender in Court the Consent Terms dated 23rd June 2023. The Consent Terms are signed by the Applicant who is personally present and by the Respondent No.4 who has signed for himself and on behalf of all the Respondents. Both the respective learned counsel identifies the respective signatures of the Applicant and the Respondent No.4. The Consent Terms are also signed for identification purpose by the learned counsel appearing for the Applicant and the learned counsel appearing for the Respondents. The Consent Terms are taken on record and marked 'X' for identification. The said Consent Terms read as under :-

“CONSENT TERMS

(1) The suit was filed by the respondent on 16th June, 2009 being Regular Civil Suit no.332/2009 before ld. Small Causes Court at Pune. The said suit has been decreed vide judgment and decree passed by the ld. Third Additional Judge, Small Causes Court at Pune on 22nd April 2014. The said judgment and decree has been confirmed in Civil Appeal no.342 of 2014 by ld. Principal District Judge on 18th April, 2022. Being aggrieved, the above referred application has been filed by the applicant.

(2) Parties have arrived at a consensus and accordingly, the consent terms are prepared as under -

(a) The Respondent agrees and the Applicant also

agrees that consent order may be passed in the above referred application.

- (b) The defendant in the suit namely the applicant admit the suit and submit to the jurisdiction of this Hon'ble Court. She agrees to withdraw the revision application and accepts the decree which is challenged in the application. However, she prays the time of 2 years to vacate the property.
- (c) During pendency of this period of two years, the applicant shall not cause any damage to the property. It is further agreed that she will maintain the property during the said period.
- (d) The applicant states that she is alone in the possession of the suit property and she shall not induct any third party in the suit property in these 2 years period. She shall pay rent and compensation regularly during this period.
- (e) In the event, the applicant commits default, the protection of two years as mentioned hereinabove shall not be available to the present applicant.
- (f) Liberty be granted in favour of the parties to approach this Hon'ble Court in case of any difficulty."

5. Accordingly in view of the Consent Terms, the Civil Revision Application is allowed to be withdrawn and dismissed as such. As a result of withdrawal of the Civil Revision Application, the judgment and order dated 22nd April 2014 passed by the learned

3rd Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune in Civil Suit No.332 of 2009 as confirmed by the Judgment and Decree dated 18th April 2022 passed by the learned Principle District Judge, Pune in Regular Civil Appeal No.342 of 2014 is confirmed.

6. The Applicant – Swarupa Anil Lodha who is personally present in the the Court states and undertakes that :-

- i. She alone is in possession of the suit property and except her no other person is in possession of the suit premises;
- ii. She shall not induct any third party in the suit property;
- iii. She will hand over the possession of the suit premises to the Respondents on or before 30th June 2025;

These undertakings personally given to the Court by Applicant – Swarupa Anil Lodha and set out in the Consent Terms are accepted as undertakings given to this Court.

7. Respondent No.4 – Sagar Pujari who is present in Court states and undertakes on behalf of all the Respondents that simultaneously at the time of getting vacant possession of the suit premises from the Applicant, the Respondents shall pay an amount of Rs.15,000/- to the Applicant. The said undertaking is accepted.

8. The Applicant who is present in Court states that she will regularly pay the rent and compensation as fixed by the learned First Appellate Court in the Small Causes Court, Pune on or before 10th of each month upto the month of 30th June 2025 i.e. till she vacates the suit premises.

9. Respondent No.4 on behalf of all the Respondents also states that the Respondents are withdrawing the allegations as contained in paragraph 5 of the plaint and allegations of similar nature appearing in Evidence Affidavit, and depositions and any other document. Said statement of the Respondent No.4 made on behalf of all the Respondents is accepted.

10. Accordingly, Civil Revision Application is allowed to be withdrawn in terms of the Consent Terms and in above terms and disposed of as above.

[MADHAV J. JAMDAR, J.]