



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION (CRA) NO.50 OF 2023

[Mirza Rahim Beg Anwar Beg thr his LRs .**Vrs.** Ms. Kusumbai Hukumichand
Agrawal and Ors.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr N. B. Kalwaghe, Advocate for Applicant.

Mr S. A. Mohta, Advocate for Non-Applicant Nos.1 to 5.

CORAM : ANIL L. PANSARE, J.

DATE : 19th OCTOBER 2023.

1. By present Revision, the Applicants are seeking to quash and set aside the judgment and decree dated 7th February, 2023 passed by the Principal District Judge, Buldhana in Regular Civil Appeal No.14 of 2021.

2. By the aforesaid judgment, the Principal District Judge has upheld the judgment and decree dated 5th January, 2021 passed by the learned Joint Civil Judge Junior Division, Buldhana in Regular Civil Suit No.265 of 2012.

3. The Applicants are tenants and the Non-Applicants are landlord. The parties herein shall be referred to as tenants and landlord respectively. The landlord had filed a suit for recovery of arrears of rent and possession of suit property. The Courts below have found that the tenants were in arrears and therefore, decreed the suit. The suit was

also decreed on the ground of *bona fide* need of landlord.

4. The learned Counsel for Applicants/tenants has submitted that the notice issued, under Section 106 of the Transfer of Property Act, 1882 by the landlord to the tenants, was not duly served upon them and landlord failed to prove that the tenants had been duly served with the said notice. He submits that the acknowledgment of said notice and postal booking receipts do not bare signature of either tenants or any of their authorized persons.

5. As against, the learned Counsel for the landlord has submitted that the notice issued, under Section 106 of the TP Act was received by the Applicant No.1. According to him, the tenants are residing at the same address and therefore, the notice has been duly served upon the tenants. He further submits that the decree has been granted on account of *bona fide* need of the family as well. One of the landlords became an Advocate and apart from the requirement of the family, he was in need of some portion of the property for his personal use.

6. At this stage, the learned Counsel for tenants submits that the landlord/Non-Applicants, in the plaint, have not pleaded that one of them has become Advocate and therefore, require the suit premises. What has been averred is, that the family is in need of premises for personal use and

convenience.

7. The learned Counsel for landlord, however, submits and rightly show that the suit has been decreed not only on the ground of *bona fide* need but also on the ground of arrears of rent. He further submits that the subsequent development can be taken aid of to prove *bona fide* need. In support, he has placed reliance upon the decision of the Coordinate Bench of this Court in Civil Revision Application No.497 of 2016 (*Rukminibai Motiram Kshirsagar and Ors. vs. Manoramabai Mallikarjun Bagale*) dated 6th September, 2019.

8. He has further relied upon the judgment of the Coordinate Bench of this Court in the case of *Abdul Gani Sheikh Hasam vs. Dilip Gopaldas Duwani*, reported in *2022 (DGLS(Bom.) 1294*, wherein the Court held that the well entrenched position of law is that the landlord is the best judge of the *bona fide* need and that *bona fide* need is subject to an objective scrutiny and further that once the case of the landlord that the premises is needed *bona fide*, need is held established.

9. As regards the receipt of notice, the record indicates that the landlord/Non-Applicants have sent the notice by Registered Post with Acknowledge Due. The tenants do not dispute the correctness of their address. It could be, thus,

presumed that the notice issued, by the landlord, has been issued at the correct address and in a way has discharged his burden. Nonetheless, even if it is presumed that the notice has not been received by the tenants, there is nothing on record to show that, after receipt of summons of the Court, the tenants have deposited the arrears of rent, in terms of Section 15(3) of the Act of 1999.

10. It appears that the suit has been filed for arrears of rent and possession on the ground of *bona fide* need of the property. Both the Courts below have rendered a concurrent finding that the tenants were in arrears of rent and further that the landlord is in *bona fide* need of suit premises. In the circumstances, I do not find any reason to interfere with the said finding in the revision, considering its limited scope. There is, thus, no merits in the application. The civil revision application is rejected.

JUDGE