



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 15 OF 2008

Balaji Pratap Panda,
Age : 55 Years, Occ. Trader,
R/o. Astabhuja Temple,
At & Post. Bhusawal,
Taluka Bhusawal, Dist. Jalgaon.

..PETITIONER

V E R S U S

1. Yashawant Keshav Babar,
Age : 52 Years, Occ. Service,
R/o. RB II 982/15
Kolsewadi, Kalyan (North)
- 2, Sheel Baburao Babar,
Age : 35 Years, Occ. Service,
R/o. Mumbai, Kalyan.
(L.rs of original defendant No.2)
3. Sharad Keshav Babar,
Since deceased through L.Rs.
- 3-A) Sushama Sharad Babar,
Age : 55 Years, Occ. Household
- 3-B) Sunil Sharad Babar,
Age : 38 Years, Occ. Service.
- 3-C) Manish Sharad Babar,
Age : 32 Years, Occ. Rickshaw Driver,
(3-A to 3-C R/o. Near Astabhuja Mandir,
Bhusawal, Taluka Bhusawal, Dist. Jalgaon.
- 3-D) Nilima Rajendra Marathe,
Age : 33 Years, Occ. Household,
R/o. Kamatwada, Raviraj Plot No.21,
Near Dhavantari Colony,
City Taluka and Dist. Nasik.
4. Kumar Keshav Babar,
Age : 56 Years, Occ. Nil
R/o. Not known

RESPONDENTS

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Shri. P. N. Kutti, Advocate for the Petitioner.
Shri. S. S. Patil, Advocate for Respondent No.1,2,3A to 3-D.
Respondent No.4 is deleted.
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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 04.04.2024.

Judgment Pronounced on : 11.06.2024.

Judgment :

1. The present petitioner, who is the original plaintiff in RCS No. 247 of 1991, is challenging the judgment and order dated 25.10.2007 passed by the learned First Appellate Court i.e. the learned Principal District Judge, Jalgaon in R.C.A. No. 239 of 2007. Under the impugned judgment, the learned First Appellate Court has set-aside the judgment and decree passed in favour of the present petitioner/plaintiff in respect of grant of possession of the suit house to him in the aforesaid civil suit.

2. Background facts are as under :-

The petitioner i.e. the original plaintiff has filed the aforesaid suit for eviction of present respondents on the ground of bonafide need and recovery of rent. According to him, he is the owner of Municipal House No. 2907 (new No.

5/760) situated within the limits of Municipal area of Bhusawal which is a two storied building. He claims that one Keshav Babar was the original tenant of one block in the aforesaid house situated at northern side of ground floor consisting of four rooms, on tenancy basis for monthly rent of Rs. 45/-. The original defendant Nos. 1 to 4 are the sons of Keshav Babar, who died on 20.12.1990 at Mumbai. Further, according to him, only the original defendant No.3 who was earlier residing elsewhere, started residing with Keshav, whereas other defendant Nos.1,2 and 4 were residing separately. The petitioner, thus, claimed that defendant No.3, who was serving in Railways, was in position to acquire either railway quarter or suitable alternate premises. He also claimed that defendant No.3 was having his own accommodation in Bhusawal, and therefore, did not require the suit premises. He further claimed that he himself used to reside in the rented premises, and therefore, needed premises for his own use.

3. Defendant No.3 resisted the suit on the ground that petitioner/ plaintiff was having other suitable premises owned by him and therefore, the petitioner did not require the suit premises. Additionally, he claimed that he did not have any

other premises in Bhusawal and also unable to secure railway quarter as his job was not categorized as an essential service. As such, he prayed for dismissal of the suit.

4. The learned Civil Judge, Junior Division, Bhusawal i.e. the learned trial Court, on the basis of evidence on record, allowed RCS No. 247 of 1991 and granted decree of possession in favour of the petitioner. However, the learned First Appellate Court reversed the judgment and decree of the learned trial Court and dismissed the aforesaid suit. Hence, this Civil Revision Application.

5. The learned counsel for the petitioner vehemently argued that the learned First Appellate Court set-aside the judgment and decree passed by the learned trial Court by ignoring the valuable evidence available on record as regards the bonafide requirement of petitioner/plaintiff. According to him, the learned First Appellate Court did not consider the admissions given by wife of original defendant No.3 whereby it was brought on record that defendant No.3 was able to acquire suitable alternate premises on his own, but despite notice of eviction, he did not search for any other alternate suitable premises. He also produced certain documents on record showing the dilapidated condition of the entire suit house to which the

Chief Officer of the Bhusawal Municipal Council has issued notice to demolish the suit house at own costs. In support of his contention he also placed reliance on the following judgments :-

- (i) **D. Sasi Kumar Vs. Soundararajan** reported in *AIR 2019 SCC 4525*
- (ii) **Indian Scientific Glass Industries Vs. M.K. Mahipalsingh Indian Inhabitant** reported in *2018 SCC OnLine Bom. 100*
- (iii) High Court of Delhi in the case of **Kashriram and Others Vs. Anita Garg** in *CM (M) 1376/2019* decided on 18th December, 2019.
- (iv) High Court of Bombay Bench at Aurangabad in the case of **Hemantkumar Prabhudasji Vora Vs. Khimji Bhanji and Company and others** in *Civil Revision Application No. 245 of 2013* decided on 31.10.2023.

6. On the contrary, the learned counsel for the respondents/tenants supported the judgment of the learned First Appellate Court and contended that the subsequent facts showing the dilapidated nature of the suit house cannot be considered. He also pointed out that under the revisional jurisdiction, this Court cannot re-appreciate the evidence. In support of his submissions, he also placed reliance on the following judgments :-

- (i) Bombay High Court in the case of **Surjabai Kevalchand Dhadiwal (since deceased by heirs and Lrs) Mohan**

Kevalchand Dhadiwal and Others Vs. Sadashiv**Savlaram Gaikwad Through L.Rs. Ramabai****Sadhashiv Gaikwad and others** in *W.P. No. 761 of 1999 decided on 14.08.2009.*

- (ii) Bombay High Court Bench at Aurangabad in the case of **Gangadhar Manji Choudhari and Others Vs. Tukaram Kisan Naikwadi and Others** in *Second Appeal No. 681 of 2006 decided on 06.10.09*
- (iii) Bombay High Court Bench at Aurangabad in the case of **Sitaram Narayan Shinde and Others Vs. Ibrahim Ismail Rais and others** in *Writ Petition No. 764 of 1991 decided on 21.06.2004.*
- (iv) Bombay High Court Bench at Aurangabad in the case of **Gammon India Ltd Vs. Ashwin Daftary and others** in *Writ Petition No. 6865 of 2002 decided on 13th September, 2004.*
- (v) Bombay High Court Bench at Aurangabad in the case of **Commander A. R. Ravindra Vs. Jagannath B. Jagtap** in *Civil Revision Application Nos. 15 and 16 of 1992 decided on 26th June 2006.*

7. Heard rival submissions and also perused and also

perused the entire material on record.

8. It is to be noted here that the learned trial Court has accepted the contention of petitioner/plaintiff that he needs the suit premises for his own bona fide use by observing that the petitioner/plaintiff himself is residing in rental premises and considering his own need, the suit premises can be given in his possession. It is significant to note that the learned trial Court has also considered the admissions given by wife of defendant No.3-tenant, wherein she has claimed that her two sons and defendant No.3 were earning members and she was aware about the availability of other suitable alternate premises in the vicinity of Bhusawal. It is not in dispute that the other legal representative of original tenant Keshav Babar namely defendant Nos. 1,2 and 4 are not residing in the suit premises and residing separately. As such, only original defendant No.3 was residing in suit premises after the death of Keshav Babar, and therefore, only the evidence in respect of the contention raised by the petitioner/plaintiff and defendant No.3 needs to be considered to decide the present controversy.

9. The learned First Appellate Court, while reversing the judgment and decree of possession, has observed that the

learned trial Court lost the sight of fact that the decree of eviction can be passed only when the tenant has secured a suitable alternative accommodation. Admittedly, both the Courts below have concurred in holding that the petitioner/plaintiff could not establish the fact that defendant No.3 had secured alternate suitable accommodation. The evidence on record also shows that the plaintiff could not adduce any documentary evidence or the evidence of independent witness to show that defendant No.3 had acquired separate premises in the Bhusawal city. However, that does not mean that he cannot established his bonafide need in respect of the suit premises for to be used by himself.

10. It is significant to note that the evidence on record shows that the petitioner/plaintiff is residing in rental premises consisting of hall and kitchen only along with his wife and three sons. It is to be noted here that such fact is admitted by defendant No.3. Further, it has to be considered that the suit was of the year 1991 and after passing substantial period thereafter, it can be safely be inferred that the sons of petitioner/plaintiff must have got married resulting into expansion of his family. It appears that certain evidence has come on record showing that petitioner/plaintiff is having

another premises at Bhusalwal which according to defendant No.3 is sufficient to accommodate his family. The learned First Appellate Court has also observed that the petitioner/plaintiff is having additional premises in Bhusawal and therefore, his claim for possession of the suit premises on the basis of bonafide use cannot be considered. However, this Court as well as Hon'ble Apex Court in recent judgments have reiterated the aspect that a tenant cannot dictate in what manner the landlord should use his premises even if he holds more than one premises. In short, it is now settled that the tenant cannot dictate the landlord to use his premises in a particular manner. Thus, it is observed that it is sufficient for landlord to say that some particular premises owned by him is required for his own use. Further, as soon as the notice is received for eviction, the tenant is under obligation to search for other alternate suitable accommodation.

11. This Court in the case of ***Indian Scientific Glass Industries Versus M.K. Mahipalsingh*** (2018 SCC OnLine Bom, 100) has referred so many judgments on the ground of bonafide need and at the time of accepting the contention of landlord on this aspect, has observed that when the bonafide need of landlord is accepted, then in respect of the aspect of

comparative hardship, it has to be decided in favour of the landlord when it is found that no attempt whatsoever had been made by tenant for getting alternative accommodation. In the instant case also, it has come on record that even after nine years of filing suit, the defendant No.3-tenant did not search for any alternative accommodation despite having sufficient means. It is extremely important to note that the wife of defendant No.3, while giving evidence being the power of attorney, has clearly admitted in her cross-examination that her husband i.e. defendant No.3, was getting net salary around Rs. 3,000/- per month. Further, she has also admitted that both of her sons were earning Rs. 1500/- per month and around Rs. 2500/- per month respectively. In addition to this, she has also admitted that after retirement of her husband defendant No.3, he would get an amount around Rs. 1,50,000/- which they could use for purchasing the house and to meet the marriage expenses of her sons. It is also important to note that she has also admitted that the petitioner/plaintiff himself is residing in the rented premises owned by one Manohar Kirange. It has also come on record that said Manohar Kirange had filed civil suit against the present petitioner/plaintiffs for eviction from that rented premises and therefore, considering this admission given by

the wife of defendant No.3-tenant, it is clearly evident that defendant No.3 was able to purchase suitable alternate accommodation on his own. Moreover, he did not make any attempt to secure such premises even after filing the suit. Therefore, the observations of the learned trial Court in respect of bonafide need of petitioner-landlord and in respect of comparative hardship to the landlord appear proper in the light of evidence on record. On the contrary, it appears that the learned Appellate Court, by ignoring such vital admissions given by the wife of defendant No.3-tenant, has drawn erroneous inference especially by observing that an eviction decree cannot be passed against the tenant unless he secures alternate accommodation. Therefore, the impugned judgment and order passed by the learned First Appellate Court appears contrary to the evidence on record.

12. The learned counsel for the respondents/tenants heavily relied on the judgment of this Court in the case of **Commander A.R. Ravindra Vs. Jagannath B. Jagtap (2006(5) ALL MR 446)** wherein it is observed that the High Court in revisional jurisdiction should not reappreciate the evidence as an Appellate Authority or substitute its findings in place of the findings of Competent Authority or the lower

Court. However, this Court in the case of **Hemantkumar Prabhudasji Vora Versus Khimji Bhanji and Company and others (Civil Revision Application No. 245 of 2012)** has discussed about the revisional jurisdiction of this Court under Section 26 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 it has been observed as follows :-

“48. Clause (c) of the Section 26 of the Act provides that the revisional jurisdiction can be exercised by the Revisional authority if the appellate authority has failed to follow the procedure in passing the order or acted illegally or with material irregularity. In the instant case, while appreciating the evidence on bona fide need of the landlord and acquiring alternate premises by the tenant the appellate Court erred in not applying the settled principles of law in considering the bona fide need of the landlord and the provisions of law on the aspect of securing alternate accommodation and has thus rendered a perverse finding of bona fide need, and also erred on the aspect of securing alternate accommodation. ”

13. Even if this observation is in respect of Hyderabad Rent Control Act, but the same can be exercised in this matter if the first appellate authority has failed to follow the procedure in passing the order or acted illegally or with material

irregularity.

14. In the instant case also, the learned First Appellate Court, contrary to the evidence on record, has failed to apply settled principles of law as regards the bonafide needs of the landlord. Moreover, the finding recorded by the learned First Appellate Court that ejection decree can be passed against the tenant only if it is established that the tenant has secured alternate suitable accommodation, appears perverse. Therefore, considering all these aspects, the judgment and order passed by the learned First Appellate Court needs to be set aside and the judgment and decree passed by the learned trial Court needs to be upheld. In view of the same, the present petition is allowed and the judgment and order passed by the learned First Appellate Court i.e. the learned Principal District Judge, Jalgaon in Regular Civil Appeal No. 239 of 2001 is hereby set aside and the judgment and decree passed by the learned trial Court i.e. learned Civil Judge, Junior Division, Bhusawal in Regular Civil Suit No. 247 of 1991 is confirmed.

(SANDIPKUMAR C. MORE, J.)