



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

CIVIL REVISION APPLICATION NO. 136 OF 2007

Sanjeevprasad Jamnaprasad Chaurasiya,
Age : 45 Years, Occ. Business,
R/o. Gandhi Chowk, Bhusawal,
District Jalgaon.

.. Petitioner
(Orig. Plaintiff)

VERSUS

1. Ganeshprasad Badrinarayan Lahoti,
Since deceased, by his heirs,
and legal representative :-
 - 1-A) Kalwati W/o Ganeshprasad Lahoti,
Age : 66 Years, Occ. Household,
R/o. Audumber Appartment, Adarsha
Colony, Jilhapeth, Jalgaon.
 - 1-B) Anil Ganeshprasad Lahoti,
Age : 47 Years, Occ. Business,
R/o. Gandhi Chowk, Darshan
Medical, Bhusawal.
 - 1-C) Rajendra Ganeshprasad Lahoti,
Age : 43 Years, Occ. Nil,
R/o. Adarsha Nagar, Jilhapeth,
Jalgaon, Dist. Jalgaon.
 - 1-D) Dr. Nandkishor Ganeshprasad Lahoti,
Age : 41 Years, Occ. Medical Practitioner,
R/o. Jivan Vima Nagar, Bengalor
(Karnataka State).
 - 1-E) Sau. Sunanda W/o Ashok Bajaj,
Age : 37 Years, Occ. Household,
R/o. Shivajinagar, Pune.
2. Bhushan Madhu Bajaj,
Age : 41 Years, Occ. Service,
R/o. Gandhi Chauk, Bhusawal,
Dist. Jalgaon.

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Mr. V.J. Dixit, Advocate for the Applicant.

Mr. Sanket S. Kulkarni, Advocate for the Respondents.

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : JULY, 25, 2024

PRONOUNCED ON : OCTOBER, 10, 2024.

JUDGMENT:-

1. The present Civil Revision Application is filed for challenging the judgment and order passed by the learned District Judge, Jalgaon in Regular Civil Appeal No. 51 of 1995 dated 31.08.2005 preferred by the petitioner, who is original plaintiff in Regular Civil Suit No. 120 of 1991. The learned District Judge, Jalgaon (hereinafter referred to as “ the learned First Appellate Court) under the aforesaid judgment, has reversed the judgment and order dated 14.02.1995 passed by the learned Civil Judge, Junior Division, Bhusawal i.e. the learned trial Court in the aforesaid suit. The respondent No.1 is original defendant No.1, who died during the pendency of First Appeal and respondent No.2 is alleged subtenant i.e. original defendant No.2 in the suit.

2. The brief facts leading to this revision application are as under :-

The petitioner/plaintiff has filed Regular Civil Suit No.

120 of 1991 against the present respondents for eviction from the suit premises on various grounds as set out under Section 13(1) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 (herein after referred to as "the Bombay Rent Act"). It is contended by the petitioner/plaintiff that the suit premises i.e. Municipal house No. 764 in CTS No. 1309 situated at Gandhi square, Bhusawal was belonging to his father Jamnaprasad and after the death of Jamnaprasad, the said premises came to his share under the family partition. Original defendant No.1 Ganeshprasad was the tenant in the premises and purpose of that tenancy was to set up a Provision Store therein. However, the petitioner then sought possession of the suit premises on the ground of bona fide requirement and non user as defendant No.1 Ganeshprasad kept the suit premises locked. Subsequently, by way of amendment, the petitioner/plaintiff also added grounds for eviction, such as, change of user, subletting and construction of permanent nature in the suit premises. On 10.02.1991, the petitioner had sent a notice to defendant No.1 and terminated his tenancy by raising the grounds under Sections 13(1)(O), 13(1)(e), 13(1)(g) and 13 (1) (k) of the Bombay Rent Act.

3. The original defendant No.1 Ganeshprasad resisted the

suit by denying all the allegations made against him by the petitioner. He came with the case that he was paying the rent regularly even by sending money order, but the petitioner/plaintiff did not issue any receipt. According to him, defendant No.2 was not his sub-tenant, but only a servant. He claimed that though the suit premises was earlier used for Provision Store, but subsequently Medical and General Store was opened in the same, but that cannot be considered as change of user since the purpose of letting the suit premises was for commercial use. As such, he prayed for dismissal of the suit.

4. Original defendant No.2 also filed his written statement by denying the adverse allegations. He also reiterated that, he is only a servant in the “*Darshan*” Medical Store being run in the suit premises and not a subtenant of respondent No.1 Ganeshprasad.

5. The learned trial Court, after conducting the trial, rejected the claim of petitioner for possession on the ground of bona fide requirement, non-user, construction of permanent nature without permission of landlord, but granted eviction of defendant No.1 Ganeshprasad i.e. tenant on the ground of

subletting by observing that the suit premises was sub-let to defendant No.2 by the defendant No.1 tenant.

6. Feeling aggrieved with this, the defendant No.1 tenant filed Regular Civil Appeal No. 51 of 1995 before the learned First Appellate Court and vide judgment and order passed in the said appeal, the learned First Appellate Court dismissed the suit of the petitioner in its entirety.

7. The learned First Appellate Court also dismissed the cross objection filed by the petitioner-landlord while allowing the appeal by supporting the observations of learned trial Court on the ground of eviction.

8. The learned counsel for the petitioner submits that the landlord/ petitioner is having every right to seek for possession of the suit premises of which he is the owner. According to him, the landlord need not establish his bona fide requirement by bringing the necessary evidence on record, but for that purpose his only intention to that effect is sufficient. The learned counsel for the petitioner also submits that the learned trial Court has rightly observed that the suit premises was sub-let by defendant No.1 to defendant No.2, but the learned First Appellate Court, by ignoring the evidence on

record, reversed the said findings. He pointed out that the suit premises is no more in existence and the tenancy right in the suit premises has come to an end. For that purpose he relied on the following judgment :-

(i) **Abdul Khuddus Versus H.M.Chandiramani (Dead) Through Legal Representatives And Others (2021) 15 Supreme Court Cases 474.**

9. On the contrary, the learned counsel for the respondents submits that the learned First Appellate Court has rightly evaluated the evidence on record in proper perspective and reversed the finding of the learned trial Court in respect of granting decree of eviction on the ground of sub-letting. He claimed that the judgment relied upon by the learned counsel for the petitioner is not at all applicable in the present case as it is in respect of Transfer of Property Act. On the point of sub-letting, he relied on the following judgments :

(i) **Hon'ble Apex Court in the case of Nirmal Kanta (Dead) through Lrs. Vs. Ashok Kumar and Others Civil Appeal No. 7160 of 2005 decided on 28.03.2008.**

(ii) **Joginder Singh Sodhi Versus Amar Kaur reported in (2005)1 SCC 31**

(iii) **Nirmal Kanta (Dead) through LR's versus Ashok Kumar and others reported in (2008) 7 SCC 722**

He also filed written submissions and thereby prayed for dismissal of the revision application.

10. Heard rival submissions and also perused the documents on record along with record and proceeding.

11. It is significant to note that the petitioner has filed Regular Civil Suit No. 120 of 1991 for eviction of defendants/tenants on the ground of bona fide requirement, change of use, creation of sub-tenancy, construction of permanent nature without his permission and acquisition of suitable accommodation by the tenant. However, from the evidence on record and impugned judgments, it is clearly evident that the petitioner/landlord has not established the grounds such as none-user, construction of permanent nature, by adducing cogent evidence, and therefore, the observations of both the learned Courts below to that effect can safely be accepted. So far as ground of acquisition of suitable accommodation by the tenant is concerned, sufficient evidence is brought on record from the side of defendants/tenants that the said accommodation was in fact

acquired by son of one of the respondents i.e. Anil by his own income and he is earning livelihood for himself independently. Thus, the said ground also needs no consideration. Thus, only two grounds appeared to be important for consideration in this revision application.

12. So far as eviction under bona fide requirement of the landlord is concerned, the petitioner/landlord has claimed that he is in reasonable and bonafide need of the suit premises for his personal use. The learned trial Court has discarded the claim of petitioner/tenant on this ground by observing that the question of bona fide requirement cannot be decided merely on the fact that the plaintiff is the owner of the suit house, but all the surrounding circumstances are to be taken together. The learned trial Court held that the petitioner/plaintiff could not establish his bonaf fide need on the basis of evidence and therefore, there was no need to consider the comparative hardship decided the issue in that respect in the negative.

13. So far as the learned First Appellate Court is concerned, the judgment in First Appeal says that the petitioner/plaintiff could not establish the factum of partition on which his claim

for bona fide requirement was dependent and therefore, rejected the same. The learned counsel for the petitioner vehemently argued that this Court as well as the Hon'ble Apex Court in many cases has already held that the tenant or even the Court cannot dictate the landlord as to how he should use his own premises and if the landlord says that he requires the suit premises for his own use, then it has to be accepted without any further evidence. Even if the bona fide need of the landlord is accepted, but the learned Appellate Court has also considered the aspect of competitive hardship which is ignored by the learned trial Court. The learned First Appellate Court, by considering the evidence on record, has come to the conclusion that even after acquisition of other suitable premises by the son of respondent Anil Lahoti, Anil should not be deprived of his livelihood, since the suit premises is the only earning source for him. Further, the learned First Appellate Court, by considering the other evidence on record, has also come to the conclusion that the comparative hardship to be suffered by the defendants is greater than the petitioner-landlord. *Prima facie* no perversity can be seen in such observation. Therefore, the rejection of claim of petitioner-landlord on the ground of bona fide

requirement does not need any interference.

14. So far as subletting is concerned, the learned trial Court by relying on the evidence of Shop Inspector came to the conclusion that defendant No.2 was found in exclusive possession of the suit premises and therefore, the decree of eviction on the said ground was passed. Admittedly, the learned First Appellate Court reversed this finding and held that no such sub-letting was there at the hands of original defendant No.1 Ganeshprasad. As such, let us now consider the evidence on this aspect. It is significant to note that the petitioner/landlord is claiming that original defendant No.1 Ganeshprasad on 17th October 1991 had sub-let the suit premises to respondent No.2 Bhushan Madhu Bajaj and the said sub-tenant started business in the suit premises under the name and style as "M/s Darshan Medical and General Store". The respondents have admittedly denied these allegations and came out with the case that the aforesaid business of Medical Shop and General Store actually belonged to respondent Anil Lahoti i.e. one of the legal representatives of original-tenant Ganeshprasad and respondent No.2 was his employee being a Chemist appointed in the said shop. For

that purpose, if the evidence of petitioner-landlord is seen, it is evident that he has changed his stand from time to time. Initially he contended that Ganeshprasad had changed the user of premises, but subsequently he came out with the case that the said Medical Shop was in fact run by respondent No.2 Bhushan Bajaj and therefore, claimed that Bhushan was the sub-tenant of Ganeshprasad.

15. It is significant to note that the respondents have not disputed the fact that respondent No.2 Bhushan was looking after the business of M/s Darshan Medical and General Store. However, the respondents-tenants contended that respondent No.2 was in fact their employee in the shop. Ganeshprasad i.e. original defendant-tenant in his evidence has already stated that. According to him, respondent No.2 was employee as Chemist in his Medical Shop on monthly salary of Rs. 600/-. Respondent No.2 has also given the same evidence. The two licenses issued in respect of M/s Darshan Medical and General Store in form No. 21-E and 21-C at Exh.84 and 85 respectively clearly indicate that the name of Anil Ganeshprasad Lahoti is shown as owner of the business and the name of respondent No.2 is shown as Chemist in the shop. It is important to note that the petitioner had examined the

Shop Inspector and the Assistant Commissioner of Food and Drug Administration Jalgaon and from the evidence of Assistant Commissioner, i.e. (P.W. No. 5), it appears that if a person wants to sell drugs and medicine he needs to obtain license from the Department of Food and Drug Administration, Maharashtra State. From his evidence it further indicates that it is not necessary that the applicant should be a Pharmacist, but at least one of the employee of the applicant must be a Pharmacist under whose supervision alone the scheduled drug and medicine can be sold. Thus, the evidence of Assistant Commissioner clearly indicates that for obtaining the certificates from Food and Drugs Department of Maharashtra State, it is not required that the applicant should be a Pharmacist. On the contrary, it is sufficient that one of his employee must possess the said qualification. Moreover, the certificates at Exh. 84 and 85 issued by the same Department clearly indicate that respondent No.2 was the Pharmacist and not the owner of business. It is significant to note that respondent No.2 would have obtained the license by showing him as owner of the business, had he intended to run the shop being a sub-tenant.

16. Therefore, on the basis of aforesaid evidence, the learned First Appellate Court has rightly come to the conclusion that respondent No.2 was a Chemist only and thereby employee of respondent Anil Lahoti. Not only this, but the subsequent events are also considered by the learned First Appellate Court i.e. respondent No.2 Bhushan Bajaj had left the employment of Anil Lahoti and was replaced by new Pharmacist by name Ramchandra Vasantray Wadhava. It is extremely important to note that the respondents have also examined the said new Pharmacist who has categorically stated that he was working with Anil as pharmacist in M/s Darshan Medical and General Store. After his employment, Anil had made an application for issuance of fresh license in respect of the business showing his name as Pharmacist employed in the said shop. Further, fresh license were also issued by the Assistant Commissioner, Food and Drug Department at (Exh.89) and (Exh.90). As such, it has been clearly established that respondent No.2 was not the sub-tenant, but only a Pharmacist under the employment of Anil Lahoti.

17. The learned counsel for respondents heavily relied on the judgment of Hon'ble Apex Court in the case of **Nirmal Kanta**

(Dead through LR's Versus Ashok Kumar and others

(supra) wherein earlier view of Hon'ble Apex Court in **Joginder**

Singh Sodhi Versus Amar Kaur reported in (2005) 1 SCC

31 has been reiterated. As per the said view, the Hon'ble Apex

Court has given twin point test required for proving the case of

sub-tenancy is as follows :-

“(I) A third party needs to be found in exclusive possession of the rented property.

(ii) Parting of possession of the rented property was for monetary concession”.

However, both these points are not established by the petitioner-landlord in the instant matter. On the contrary, it has been established on the basis of evidence that respondent No.2 was the only a chemist under the employment of respondent Anil Lahoti.

Therefore, no perversity is found in the observation of learned First Appellate Court that premises was not sub-let by respondent No.1/original respondent No.1 Ganeshprasad.

18. Lastly, the learned counsel for the petitioner-landlord made submission that since the suit premises is not in existence, the respondents have lost their tenancy right. For

that purpose he heavily relied on the judgment of the Hon'ble Apex Court in the case of Abdul ***Khuddus Vs. H.M. Chandiramani (dead) Through Legal Representatives and Others (supra)*** . In the aforesaid judgment the Hon'ble Apex Court has made following observations

“After demolishing of the building by City Corporation, the statutory tenants are not entitled for protection both under Rent Act of 1961 and Transfer of Property Act. The statutory tenant cannot seek repossession after demolition of building, under Section 108 (e) of Transfer of Property Act as rights and liabilities of statutory tenants have to be found under the rent Act alone. The remedy of the tenant if any has to be found within four corner of Rent Act and not under the Transfer of Property Act. ”

From the aforesaid observations it appears that the right of statutory tenant lapses under the provision of Transfer of Property Act and not under the provision of Rent Act and therefore, the aforesaid submissions that on demolition of the suit premises, the right of present respondents in respect of the tenancy is lost, cannot be accepted.

19. Thus, considering all these aspects, the learned First Appellate Court has rightly dismissed the suit of the petitioner-landlord for claiming eviction of the

respondents/tenants and therefore, no interference is required in the same. Thus, the Civil Revision Application stands dismissed.

(SANDIPKUMAR C. MORE, J.)

Y.S.Kulkarni P.A.