



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

CIVIL REVISION APPLICATION NO.208 OF 2023

Surekha Deepak Hiwale,
Age : 47 years, Occu.: Household,
R/o.: B-6, Tajas Ekat Bunglow,
Satara Parisar,
Chatrapati Sambhajinagar

.... **APPLICANT**
(Original defendant)

VERSUS

Sushila Ramesh Nagul,
Age : 64 years, Occu.: Service,
R/o.: Nagsen Nagar, Osmanpura,
Tq. & Dist.: Chatrapati Sambhajinagar

.... **RESPONDENT**
(Original plaintiff)

.....
Mr. Ameya N. Sabnis, Advocate for the Applicant
Mr. S. B. Yawalkar, Advocate for the Respondent
....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 05/08/2024

PRONOUNCED ON : 14/10/2024.

JUDGMENT :

1. The present applicant, who is the original defendant in Rent Suit No.1 of 2015, has preferred this revision application against the judgment and decree passed in Rent Appeal No.2 of 2021 by the learned first appellate court i.e. District Judge-9, Aurangabad. Under the said decree, the learned first appellate court has confirmed the judgment and decree dated 22/09/2021 passed in

the aforesaid suit by the learned trial court i.e. 15th Joint Civil Judge (Junior Division), Aurangabad. Under both the impugned judgments and decrees the present applicant is directed to vacate the suit premises.

2. Background facts are as under :

The aforesaid suit has been filed by the present respondent / plaintiff for eviction of the applicant / defendant from the suit premises i.e. RCC bungalow No.6, admeasuring 475 square feet constructed on plot Nos.3 to 6 of Gat Not.90/1, situated in village Satara, Aurangabad, which is purchased by her from M/s Ekta Buildcon by availing loan from Dena Bank for a consideration of Rs.4, 00,000/-. It is contended by the plaintiff that she agreed to rent out the suit premises to the applicant / defendant on monthly rent of Rs.2,000/- and it was agreed between them that the applicant / defendant would pay installments of Rs.2,000/- in lieu of rent directly in Dena Bank. Accordingly, on 24/08/2011, the applicant / defendant entered into possession of the suit premises. However, at the relevant time, the applicant / defendant had obtained a signature of the respondent / plaintiff on one blank stamp paper with assurance that she would write down conditions of tenancy. However, the applicant / defendant did not

provide any copy of that stamp paper to the respondent / plaintiff. Then, the respondent / plaintiff came to know from Dena Bank about non-payment of installments by the applicant / defendant. On making inquiry, the applicant / defendant gave her evasive reply. Subsequently, in the month of June, 2012 the respondent / plaintiff received a notice from Dena Bank calling upon her to make payment of installments. The respondent / plaintiff then approached to the applicant / defendant and asked about the non-payment of rent, the applicant / defendant abused and threatened her. The respondent / plaintiff, therefore, filed a complaint in Satara Police Station against the applicant / defendant.

Besides, the plaintiff also claimed that she is having two sons and one daughter and they are married. As their family is expanding, she requires the suit premises for her own use. According to her, she is residing in Nagsen Nagar area of Aurangabad with her two married sons, which is in fact a slum area and atmosphere of the said area is not suitable for her grand children. Then on 07/12/2014 the respondent / plaintiff visited the suit premises and requested the applicant / defendant to vacate the suit premises, but the applicant / defendant refused for the same. Therefore, the respondent / plaintiff was constrained to file the present suit.

On the contrary, the applicant / defendant resisted the suit by filing a written statement and thereby denied all the adverse contentions made against her by the respondent / plaintiff. The defendant / applicant came with a case that since the respondent / plaintiff was unable to pay the installments of loan, she sold the suit premises to her under a notarized sale deed dated 25/02/2010 for the consideration of Rs.3,60,000/- by accepting an amount of Rs.9,000/-. According to her, it was agreed between them that the applicant / defendant was to pay the outstanding loan amount and after the repayment of said loan amount, the respondent / plaintiff was to execute a registered sale deed in his favour. Thus, according to the applicant / defendant, she came into possession of the suit premises on 25/02/2010 as an owner. She claimed that she was never a tenant of the respondent / plaintiff but as there is hike in prices of the house properties, the respondent / plaintiff filed the false suit. The learned trial court after conducting the trial, decreed the suit and directed the applicant / defendant to hand over vacant possession of the suit premises to the respondent / plaintiff within three months. Feeling aggrieved with the said decision, the applicant / defendant filed an appeal before the learned first appellate court, but the same is also dismissed with costs on 21/10/2023. Hence, this civil revision application.

3. The learned counsel for the applicant / defendant submits that both the learned courts below have definitely erred in interpreting the document dated 25/02/2010 under which the applicant / defendant is claiming ownership of the suit property. According to him, the said document was in fact an agreement to sell and the defendant has also filed a suit for specific performance based on the said document. He submitted that both the learned courts below did not appreciate the evidence in proper perspective and the finding in respect of tenancy by both the courts below will definitely cause trouble to the applicant / defendant in her suit for specific performance. He also relied upon following judgment.

***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta,
reported in (1999) 6 SCC 222.***

4. On the contrary, the learned counsel for the respondent / plaintiff supported the judgments of both the learned courts below and claimed that both the learned courts below have properly appreciated the evidence and evicted the applicant / defendant on the ground of default as well as *bonafide* requirement. According to him, the learned first appellate court as well as the learned trial court, have already discarded the theory of ownership of the defendant on the basis of unregistered sale deed. He pointed out

that the subsequent suit for specific performance has been filed by the defendant as an after thought and to harass the respondent / plaintiff. He also relied on following judgment.

Nilkanthrao Raghunathji Chute vs. Dattatraya Narayanrao Balakhe, reported in 2019(3) Mh.L.J. 874.

5. Heard rival submissions. Also perused the documents on record alongwith the impugned judgments and decrees.

6. It is not disputed that the respondent / plaintiff had purchased the suit property from M/s Ekta Buildcon for the consideration of Rs.4,00,000/-. It is the case of the respondent / plaintiff that she decided to rent the suit premises to the applicant / defendant on 24/08/2011 as per the case set out by her in the plaint. However, as per the applicant / defendant, the respondent / plaintiff had sold the suit property by executing a notarized sale deed dated 25/02/2010 in her favour for the consideration of Rs.3,60,000/- by accepting an amount of Rs.9,000/-. The remaining consideration was to be paid by her by paying the installments of loan, which the respondent / plaintiff had secured from Dena Bank. Therefore, let us consider the case

of the applicant / defendant as to whether she has established the same.

7. It is to be noted that the notarized sale deed / agreement, which is at Article-A is definitely inadmissible in the evidence for proving the sale transaction as it relates to sale of immovable property worth more than Rs.100/-. Further, the applicant / defendant has also tried to claim that it was an agreement to sell in fact and the respondent / plaintiff was to execute a registered sale deed after repayment of entire loan amount of Dena Bank. Both the learned courts below have recorded findings by considering the legal provisions of Section 17 of the amended Registration Act as well as Section 49 of the said Act and have come to the conclusion that the said document Article-A is not at all admissible for proving either the sale transaction or the agreement to sell. Further, it is also held concurrently that the said agreement shall not have any effect for the purpose of Section 53A of the Transfer of Property Act. Prima facie, there appears no perversity in the findings of both the lower courts below and therefore, it can safely be held that the applicant / defendant has failed to establish her case that the respondent / plaintiff had agreed to sell the suit premises to her under the said document at Article-A. It is important to note

though the applicant / defendant claimed that the respondent / plaintiff had sold the suit premises to her under the said document Article-A on 25/02/2010, but she could not produce any document such as electricity bill, tax payment receipts etc., prior to 24/08/2011. Thus, on failure of proving the case of purchase of the suit premises under the document Article-A the appellant has also failed to establish his possession over the suit premises from the date of said document. Thus, considering the evidence on record, the theory of creation of landlord and tenant between the respondent / plaintiff and applicant / defendant set out by the respondent / plaintiff appears more convincing.

8. So far as the claim of the respondent / plaintiff on the ground of *bonafide* requirement and default in payment of rent is concerned, admittedly there is evidence on record that the applicant / defendant in around 10 years only paid installments to the tune of Rs.65,000/-. As per the discussion between the parties, the applicant / defendant had undertaken to pay installment of Rs.2,000/- per month to Dena Bank being rent of the suit premises. However, actual amount paid by the applicant / defendant in Dena Bank clearly indicates that she has made

default in payment of rent and therefore, the ground under Section 15 of the Tenancy Act, has definitely attracted for her eviction.

9. So far as *bonafide* requirement of the respondent / plaintiff is concerned, she has claimed that she is having two sons, who are already married and they are also having their children. Further, she resides in Nagsen Nagar area, which is not suitable for her grand children and as her family is expanding, she is in need of the suit premises. The learned counsel for the applicant / defendant heavily relied upon the judgment of the Hon'ble Apex Court in the case of ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*** (*supra*) wherein it is observed that the landlord must substantiate his need of suit premises for personal use to be natural, real, sincere and honest. However, the learned counsel for the respondent / applicant also relied on the judgment of this court in the case of ***Nilkanthrao Raghunathji Chute vs. Dattatraya Narayanrao Balakhe*** (*supra*), wherein it is observed that landlord is best judge of his / her need and even the court cannot suggest alternatives to the landlord. In the recent judgments even the Hon'ble Apex Court has held that to establish *bonafide* requirement, the landlord need not to give any account as to how and in what circumstances he requires the suit premises but only it is sufficient for him to

express such intention. The tenant or even the court cannot suggest the landlord any alternatives for his need without disturbing the tenant. Further, it is also settled now that once the tenant gets a notice of eviction, then he should immediately start for securing other alternative premises for him. There is nothing on record to show that the applicant / defendant had made such attempt or even by making such attempt she could not find any other suitable alternate accommodation. Therefore, considering the growing family of the respondent / plaintiff, her *bonafide* need is already established and therefore, the decree of eviction of the applicant / defendant by both the learned courts below appears sound in the light of settled legal principles specially when the applicant / defendant failed to establish her claim of acquiring title of the suit premises on the basis of an unregistered document Article-A. Therefore, no perversity is found in evicting the applicant / defendant on the ground of *bonafide* requirement from the suit premises at the hands of both the learned courts below.

10. The learned counsel for the applicant / defendant vehemently argued that the findings given by both the learned courts below in respect of landlord and tenant relationship between the parties would definitely hamper the right of the applicant / defendant in

claiming specific performance of the contract on the basis of document Article-A. However, it is clearly evident that the suit of the respondent / plaintiff was decided on 22/09/2021 and Regular Civil Suit No.1616 of 2022 filed by the applicant / defendant for grant of decree of specific performance on the basis of document Article-A is filed somewhere in the month of November 2022. Thus, such filing of suit for specific performance of contract clearly indicate the *malafide* intention of the applicant / defendant since after being defeated in the suit for possession by the respondent / plaintiff on the basis of landlord and tenant relationship, she has come with the aforesaid subsequent suit. As such, the act of filing such subsequent suit for specific performance can definitely treated as an after thought to defeat the right of the respondent / plaintiff. Thus, submission of the learned counsel for the applicant / defendant that the observation of both the learned courts below in respect of landlord and tenant relationship between the parties will hamper the suit of the applicant / defendant, is discarded.

11. Considering all these facts and concurrent findings of both the learned courts below, the respondent / plaintiff has definitely succeeded in establishing her case for eviction of the applicant / defendant on the ground of *bonafide* requirement and default in

rent. On the contrary, the applicant / defendant has miserably failed in establishing her case of purchase of the suit premises under the unregistered sale deed Article-A. Therefore, no substance is there in the present civil revision application and accordingly it stands dismissed at admission stage.

(SANDIPKUMAR C. MORE, J.)

12. After pronouncement of the order, the learned counsel for the applicant / defendant submits that the statement made by the learned counsel for the respondent / landlord / plaintiff be continued till challenging the order before the superior authority. The learned counsel for the respondent / plaintiff in good faith submits that since the matter is decided on merit, he is unable to make statement that he would not prosecute the execution proceeding. However, since the applicant intends to challenge the order before the superior authority, there shall be stay to on going execution proceeding only for the period of four weeks.

(SANDIPKUMAR C. MORE, J.)