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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.574 OF 2022

M/s.Ghatge Patil Transport Limited,

A Private Limited Company registered
under the Companies Act, having its
registered office at 517, E, Pune Bangalore
Road,
Kolhapur.

...Applicant

....Versus....

1. Shridhar Tukaram Khade,
(since deceased through His L.Rs.)
- 1a) Smt.Padmini Shridhar Khade,
. (since deceased through Her L.Rs.)
- 1b) Ravindra Shridhar Khade,
. Age 66 years, Occupation : Business,
Residing at Kawthe Ekand, Tal.
Tasgaon, District Sangli.
- 1c) Ramesh Shridhar Khade,
. Age 69 years, Occupation : Business,
Residing at Kawthe Ekand, Tal.
Tasgaon, District Sangli.
- 1d) Prathibha Abhinandan Chougule,
. Age 56 years, Occupation : Housewife,
Residing at Redakihal, Tal. Chikodi,

District Belgaum.

...Respondents

Mr.Yuvraj P. Narvankar for the Applicant.

Mr.Tejpall S. Ingale with Ms.Priyanka Babar for the Respondents.

CORAM : RAJESH S. PATIL, J.
DATE : 25TH JANUARY, 2024.

ORAL JUDGMENT :

1. This Civil Revision Application challenges the concurrent findings of eviction on ground of bonafide requirement under the Maharashtra Rent Control Act,1999 recorded by the judgment and decree dated 29 September 2022, passed by the Principal District Judge, Sangli in Regular Civil Appeal No.159 of 2010, and the judgment and decree dated 22 April 2010, passed by the Trial Court in Special Civil Suit No.502 of 1099.

2. The Applicant herein is the Original Defendant before the Trial Court and the Respondent herein is the Original Plaintiff before the Trial Court. The subject matter of the property (for short “the suit premises”) is one godown along with two rooms adjoining to it bearing CTS Nos.2827, 28258 and 2831, situated

at Madhav Nagar, Sangli. For ease of reference, the parties are referred as per their nomenclature before the Trial Court.

3. The suit premises was leased by the Plaintiff to the Defendant Company. By a notice, lease was terminated by the Plaintiff. Thereafter the Plaintiff filed suit for eviction being Regular Civil Suit No.502 of 1999, on the grounds of Bonafide Requirement, Arrears of Rent and the Change of User. The Defendant appeared in the matter and filed their written statement . Issues were framed and on behalf of the Plaintiff, evidence was led by PW - 1 Mr. Shridhar Khade, and PW 2 – Mr.Ramesh Khade and P.W. - 3 Rohit Khade. All the witnesses of the Plaintiff were cross-examined by the Defendant's advocate. Thereafter, the Defendant led their evidence by examining their Sr. Clerk – Mr. Ashok Jadhav as D.W. -1 and Mr. Ganesh Phadke, as D.W. - 2. The said witnesses were cross-examined by the Plaintiff's advocate.

4. After hearing the parties, the Trial Court by judgment and decree dated 22 April 2010 passed eviction decree on the ground of 'Bonafide Requirement' against the Defendant.

5. Being aggrieved by the eviction decree, Original Defendant Company filed Appeal before the District Court, being Regular Civil Appeal No.159 of 2010. However, the Appellate Court by its judgment and decree dated 29 January 2016, remanded the matter back on the issues of “bar of suit under Section 3(1) (b) of the Maharashtra Rent Control Act, 1999.

6. Being dis-satisfied with the judgment and order passed by the Appellate Court, the original Plaintiff filed Civil Revision Application No.148 of 2017 before this Court. By its judgment and order this Court reversed and set-aside the judgment of the Appellate Court and remanded the matter on the ground that the Rent Control Act, 1947 would governed the subject matter of the proceedings and not the Maharashtra Rent Control Act, 1999.

7. After remand, the matter was again heard by the Appellate Bench and the Appellate Bench by its judgment and order dated 29 September 2022 passed the impugned judgment and decree thereby confirming the decree of eviction, on the ground of ‘Bonafide Requirement’.

8. The present Civil Revision Application is filed by the

Original Defendant challenging the concurrent findings of eviction on ground of 'Bonafide Requirement'.

9. Mr.Narvankar made his submissions on behalf of the Original Defendant / Applicant herein.

(i). Mr. Narvankar submitted that both the courts had failed to appreciate a very important fact, that the plaintiff had failed to disclose the existence and possession of alternate, adjacent and adequate premises available with the plaintiff therefore, the need as pressed by the Plaintiff is not a *bona fide* need.

(ii) Mr. Narvankar submitted that the suppression of alternate premises available with the Plaintiff, should have been held to be material change and even though the Defendant/Tenant had raised such an issue before the Appellate Court, the Court did not consider the said submissions made on behalf of the Tenant.

(iii) There was not even a remote explanation about the insufficiency of the premises available with the Plaintiff/Landlord.

(iv) The need as claimed by the Plaintiff, being that of the

daughter of the Plaintiff requiring the premises for the purpose of her business of transport, however she chose not to enter into the witness box, to testify about the need of the premises, which was not even referred in the plaint.

(v) The suit premises are located right in the transport hub and were absolutely suitable for the business of the Defendant - Tenant.

(vi) The Court did not consider the fact that the son of the Plaintiff had settled at village Kavathe-Ekand, after his education, therefore, there was no need subsisting at the time of filing of the suit.

(vi) The Court did not take into consideration the cross-examination of the Plaintiff's witness.

(vii) Mr. Narvankar relied upon the following judgment of Bombay High Court to buttress his submission :

(a) ***Tarachand Hassaram Shamdasani v/s. Durgashankar G. Shroff & Ors.*** reported in 2004 BOMCR SUPP 1 333

(b) ***Sitaram Narayan Shinde & Ors v/s. Ibrahim Ismail Rais & Ors*** reported in ***2005 (1) Mh.L.J. 34.***

(c) ***Vivek Trimbakrao Paturkar (M/S) v/s. Sulochanabai w/o Gangadharrao Wattamwar*** reported in ***2022 (4) Mh.L.J 41***

10. In reply Mr. Tejpal Ingale lead his submission on behalf of the Respondent/Landlord.

(i) Mr. Ingale submitted that two courts have concurrently held that the Plaintiff has proved the ground of bona fide and reasonable requirement, therefore, this Court under Section 115 of the Code of Civil Procedure should not entertain this Civil Revision Application.

(ii) Mr. Ingale submitted that the applicant/original defendant is a very big transport company in the State of Maharashtra, who has many offices all over the State even then they are not ready to vacate the suit premises of the Plaintiff, when they can easily move into their own premises.

(iii) Mr. Ingale submitted that in spite of two eviction decree passed in favour of the Plaintiff, they are not able to enjoy the fruits of decree.

(iv) Mr. Ingale submitted that the suit premises is consisting

of a godown admeasuring 51 ft. x 40 ft. and two rooms admeasuring 15 ft. x 18 ft., and monthly rent is only Rs.500 per month. In contrast, the landlord is in possession is only two rooms admeasuring 60 ft. x 18 ft.

(v) Mr Ingale submitted that the Original Plaintiff/Landlord has two sons and one daughter. The need as pressed was that for the two sons and daughter.

(vi) Mr. Ingale submitted that the Plaintiff No.1 – Ravindra Kale was the elder son of original landlord had entered into the witness box and had narrated his requirement of the Plaintiff. The said witness box was cross-examined however, nothing contrary would be plot on record by the Defendant - Lanlord.

(vii) So also the Plaintiff No.2 - Ramesh Khade had entered into the witness box was for the purpose of proving the requirement of the plaintiff landlord. Even in his cross-examination nothing could be brought on record by the Defendant.

(viii) So also the evidence of son of Plaintiff No.1 i.e. Rohit were recorded for the purpose to prove the requirement of the

Plaintiff - landlord he said witness box was cross-examined but the Defendant was not able to bring on record any facts.

(ix) On behalf of the Defendant-Tenant only one Mr. Ashok Jadhav had entered into the witness box to lead evidence on behalf of the defendant in his cross-examination, he admitted that the Defendant is having 102 branches and so also they owned 300 trucks and they had purchased commercial premises for their business at Vakharbaug, Sangali and also at Mahavir Nagar, Sangli admeasuring 8500 sq. mtr the said premises was at least three times bigger in size than the suit premises at Madhav Nagar. Both Courts have concurrently held that the Plaintiff had proved the ground of *bona fide* requirement, therefore, this Court should not entertain the present Civil Revision Application.

(x) Mr. Ingale further submitted that there is no question of suppression on the part of the Plaintiff about the landlord in possession of two rooms next to the suit premises. He submitted that the Plaintiffs are aware from day one that the Defendant is in possession of two rooms next to the suit premises. The Plaintiff has never disputed this fact.

(xi) Mr. Ingale submitted that once defendant is aware about the premises available with the Plaintiff, there will be no question of suppression, as held by the Supreme Court in the judgment of *M. L. Prabhakar v/s. Rajiv Singal* reported in (2001) 2 SCC 355 and *Ram Narain Arora v/s. Aasha Rani & Ors.* reported in (1999) 2 SCC 141.

(xii) Mr. Ingale also relied upon the judgment of Bombay High Court in *Balwant P. Doshi v/s. Shantaben Dhirajlal Shah & Anr.* 2002 (4) Mh.L.J 473 wherein it was held that the His Court the landlord who is staying in rental premises, if desires to stay in his owned accommodation then the Court as a rule should not refuse the decree and he also relied upon the judgment of *Abid-Ul-Islam v/s. Inder Sain Dua* reported in (2022) 6 SCC 30. wherein it was held that the High Court is not expected to substitute and supplant. Its view with that of Trial Court while exercising Appellate Jurisdiction.

(xiii) Mr. Ingale also referred on the judgment of *M. L. Prabhakar v/s. Rajiv Singal* reported in (2001) 2 SCC 355 and *Ram Narain Arora v/s. Aasha Rani & Ors.* reported in (1999) 2

SCC 141 and Bombay High Court in *Balwant P. Doshi v/s. Shantaben Dhirajlal Shah.Anr.* reported in *2002 (4) Mh.L.J 473* and judgment of Bombay High Court in *Sara Rauf & Anr v/s. Durgashankar Ganeshlal Shroff & Ors.* Reported in *2007 (4) Mh.L.J 129* and the judgment of Bombay High Court in *Rukmini Motiram Kshirsagar v/s. Manorambai Mallikarjun Bagale* reported in *(2020) 2 Mah LJ 756*.

ANALYSIS and CONCLUSION

11. I have heard both the counsels for the parties and I have gone through the documents on record.

12. The Suit was filed by the Plaintiff for eviction on the ground of *bona fide* requirement, the ground of default in payment of rent and the change of user. The suit premises consists of godown and two rooms. The tenant, who is the applicant herein is well known transport company in the State of Maharashtra known as M/s. Ghatge Patil Transport Ltd.

13. The Trial Court decreed the suit only on the ground of

‘Bonafide Requirement’. The Appellate Court dismissed the Appeal of the Tenant/Transport Company thereby confirming the ground of *bona fide* requirement. The present Civil Revision application challenges the concurrent findings recorded by both the Courts.

14. The Trial Court and Appellate Court were satisfied with the evidence recorded by Plaintiff No.1 (b), Plaintiff No. 1 (c) and son of Plaintiff No.1 (b); and has granted a decree of eviction on the ground of *bona fide* requirement.

15. The need as pressed by the Plaintiff in the plaint that of requirement for the purpose of sons and daughter of the original plaintiff i.e. Plaintiff No.1 (a), 1 (b) and 1 (c). The said witnesses of the Plaintiff in their evidence have categorically stated about their requirement. They have stated that the Plaintiff No.1 (b) is carrying on his business of an agency for which purpose he does not have sufficient godown and shop premises for storage of oil barrels for doing the business. Therefore, he cannot expand his

business. He is therefore, required to visit the places of his customers. He also pleaded that his son is doing the business of sale of Tata Indica equipment in MIDC in rented premises. So also Plaintiff No.2 (Ramesh) narrated that he has to expand his cloth business and for the said purpose he requires the suit premises. The said witnesses also gave details of the premises in occupation of tenant transport company. The Plaintiff witness No.3 (Rohit) also narrated that he is doing business of Tata Tele Communication, mobile shop in rented premises in MIDC area and he intends to start the said business in near by Sangli city.

16. It is also come in evidence that the Plaintiff transport company has around 102 branches and are owning around 300 trucks and their share capital is of rupees Two Crore. It is also come on record in the evidence that the Defendant transport company has purchased commercial premises of its own at Vakharbaug, Sangli and also at Mahavir Nagar, Sangli, admeasuring 8500 sq.ft. It has also been admitted, in the cross-examination by Defendant witness that the acquired premises of

the tenant is 3 times bigger in size then that the suit premises.

17. The Trial Court and Appellate Court have considered this evidence on record and have decreed the suit of the Plaintiff. I do not find infirmity in the impugned judgments and decrees passed on the grounds of bonafide requirement.

18. As regards the judgment of Kshirsagar (supra) the Single Judge of this Court considered the facts on record, wherein the landlord sons were carrying out their business by selling articles on a carts and they have seeking possession of the suit premises, being a shop, the Single Judge of this Court confirming the findings of the Trial Court and Appellate Court. So also in the judgment of Sara Rauf (supra). This Court considered the facts on record and held there was no suppression on the part of the landlord and requirement of the landlord subsisted even though another premises was handed over in an execution decree.

19. The judgment of this Court in Sitaram (supra) this Court held that there was no sufficient evidence and therefore,

this Court rejected the suit of the landlord. In the judgment of Tarachand (supra) this Court was dealing with the situation where there was a clear suppression of facts by the landlord. In the judgment of Paturkar (supra) the facts in the said judgment are quite different. Therefore, in view of the suppression of facts the suit of the landlord was dismissed.

20. In the light of the above analysis, in my opinion I find no perversity in both the judgments and decree passed on grounds of Bonafide Requirement. Hence, this Civil Revision Application deserve to be dismissed.

21. This Civil Revision Application is dismissed. No cost.

22. Six weeks time is granted to the applicant to vacate the suit premises.

(RAJESH S. PATIL, J.)