

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.110 OF 2024

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RANGNATH
WAHULE

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The Madhavnagar Co-operative
Housing Society Limited ... Applicant

V/s.

Laherilal Jain ... Respondent

Mr. Ajit Kocharekar, Advocate for the Applicant in both.
None for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 21 FEBRUARY 2024

P.C.:

1. This Civil Revision Application has filed under Section 115 of the Civil Procedure Code, challenges the Judgment and Order dated 25 October 2023, passed by Appellate Bench of Court of Small Causes, thereby setting aside the Judgment and Order dated 4 March 2021, passed by Trial Court, thereby remanding the matter back to Trial Court for framing “additional issues on hardship”.

2. The Appellate Bench has remanded the matter back for the Trial Court, for the limited purpose to frame the issue as issue no.1A- “Whether plaintiff prove that no hardship will be caused if decree for eviction is passed on the ground of bonafide requirement to the defendant”?

2. Mr. Ajit Kocharekar appearing on behalf of the landlord submits that there was no need to remand the matter back to the Trial Court and direct the Trial Court to frame an issue about “Hardship”.

3. Mr. Ajit Kocharekar submitted that the Trial Court had already decided the issue of hardship, even though such issue was never framed by the Trial Court. He submitted that even if the Appellate Court was desirous of calling for finding on the issue of hardship, the Appellate Bench should have kept the matter pending before the Appellate Bench and could have called for the findings from the Trial Court on the issue of hardship.

4. I have gone through the documents on record and including the impugned judgment it is a matter on record that the issues which have framed the issue of hardship is not. The issues as framed by the Trial Court are as under :-

Sr. No.	Issues	Findings
1.	Does the plaintiff prove that they required the suit premises for their reasonable and bona fide requirement?	Yes
2.	Does the plaintiff prove that the defendant has done acts causing nuisance and annoyance to the plaintiff society and committed the breach of the provisions of the Maharashtra Rent Control Act ?	No.
3.	Is the plaintiff entitled for the relief of possession and permanent injunction ?	Yes.
4.	Is the plaintiff entitled for inquiry into mesne profits ?	Yes.
5.	What order and decree ?	As per final order.

ADDITIONAL ISSUES

1. Does the plaintiff prove that the defendant has committed breach under Section 108 (o) of the Transfer of Property Act read with Section 16 (1) (a) of the Maharashtra Rent Control Act, 1999 ?

No.

2. Does the plaintiff prove that the defendant has carried out waste and damage to the suit premises ?

No.

3. Does the plaintiff further prove that defendant had committed breach of terms and conditions of tenancy in respect of suit premises ?

No.

5. Under the rent act proceedings once the issue was reasonable and bonafide requirement is framed and in the pleadings there is a ground of comparative hardship, The Trial Court should have also framed the issue of “comparative hardship”. However, in the present proceedings the issue of comparative hardship was not framed by the Trial Court.

6. As the issue of comparative hardship was not framed, the defendant / tenant was not put to notice that he should be answering the issue of comparative hardship. In paragraph no.6 of the plaint, the plaintiff / landlord has specifically stated that no hardship would be caused to the defendant if the decree as prayed is passed in favour of the plaintiff. In the written statement the tenant / defendant while dealing with the submissions made in para no.6 of the plaint, he has denied that hardship or prejudice will be caused if the decree is passed. And further the defendant has stated that the great prejudice loss and hardship will be caused

to the defendant if the decree is passed against the defendant.

7. In such a situation the Appellate Court has rightly remanded back the matter to the Trial Court and directing the Trial Court to frame the issue of hardship.

8. I find no perversity in the Judgment and Order dated 25 October 2023, passed by the Appellate Bench of Court of Small Causes.

9. Therefore, this Civil Revision Application is dismissed.

(RAJESH S. PATIL, J.)