

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 512 OF 2024

1. Mr. Jilajeet Satyanarayan Pandey
 2. Vijaykumar Satyanarayan Pandey
 3. Mr. Indrajeet Satyanarayan Pandey
 4. Mr. Rajkumar S. Pandey
 5. Mr. Pralhad Somnath Mishra
- (since deceased)

....*Applicants*

: *Versus* :

1. Shri Chandrabali Rajnarayan Shukla
- (since deceased)
- 1A. Mr. Daroga Chandrabali Shukla
 - 1B. Brijbhushan Chandrabali Shukla
2. Vinod Dube
 3. Shivnath Prajapati

....*Respondents*

Dr. Abhinav Chandrachud with Mrs. Vandana Tiwari i/b Mrs. Usha Tiwari, for the Applicants.

Mr. Anil Singh, Senior Advocate with Mr. D. D. Singh, Mr. Aadarsh Vyas, Ms. Ruchita Verma, Ms. Rama Gupta and Mr. D.K.Shukla, for the Respondent No.1(b).

CORAM : SANDEEP V. MARNE, J.

Reserved On : 18 DECEMBER 2024.

Pronounced On : 20 DECEMBER 2024.

JUDGMENT :

1) Applicants have invoked revisional jurisdiction of this Court under the provisions of Section 115 of the Code of Civil Procedure to set up a challenge to the judgment and decree dated 30 March 2024 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No. 48/2013 and confirming the eviction decree dated 6 September 2013 passed by the Small Causes Court, Mumbai in R.A.E. Suit No.196/479 of 2003. The eviction of the Applicants is ultimately upheld by the Appellate Court on the solitary ground of bonafide requirement of the Plaintiff.

2) Facts of the case, as pleaded in the plaint, are that Plaintiff claims ownership in respect of the property bearing Stable No. 93, comprising of 30 Khilas, Godown 20 ft x 15 ft and an open space 15 ft x 20 ft, situated at Chandrabali Rajnarayan Shukla Stable, Pump House, Jijamata Road, Andheri (East), Mumbai-400 093 (**suit premises**). The original Defendant was inducted as a monthly tenant in respect of the suit premises sometime in the year 1970. It appears that Plaintiff had earlier filed R.A.E. Suit No. 699/3681 of 1972 against the original Defendant for his eviction, but a settlement took place between the parties and accordingly fresh tenancy agreement dated 23 June 1984 was executed between them. Plaintiff instituted Suit being R.A.E. Suit No.196/479 of 2003 against the original Defendant alleging default in payment of rent, bonafide requirement of Plaintiff and his family members, commission of breach of terms and conditions of tenancy, nuisance and annoyance, erection of permanent structure without landlord's consent and unlawful

subletting. Defendant appeared in the suit and filed written statement contesting the claim of the Plaintiffs. Based on the pleadings raised by the parties, the Trial Court framed issues. Parties led evidence in support of their respective claims. It appears that the plaint was amended alleging that newly added Defendant Nos. 2 to 4 (brothers of Defendants) were illegally and unauthorisedly occupying the suit premises and causing unauthorised construction thereon. That the premises were sublet by Defendant in favour of Defendant Nos.2 to 4. That in the newly constructed room in the suit premises, some portion was illegally occupied by Defendant Nos. 5, 6 and 7.

3) After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to decree the suit by judgment and order dated 6 September 2013 by accepting only two grounds of Plaintiff viz. bonafide requirement and commission of breach of terms and conditions of tenancy. The grounds of nuisance/annoyance, erecting permanent structure without landlord's consent and unlawful subletting were however rejected. Defendants were directed to handover possession of the suit premises to the Plaintiff with further order of injunction restraining them from creating any third-party interests till delivery of possession. The Small Causes Court also directed a separate enquiry into mesne profits under the provisions of Order XX Rule 12 of the Code.

4) Defendant Nos.1 to 5 filed Appeal No.48/2013 before the Appellate Bench of the Small Causes Court challenging the eviction decree dated 6 September 2013. The Appellate Court has reversed the findings of the Small Causes Court on the issue of commission of breach of terms and conditions of tenancy agreement. However, the

ground of bonafide requirement of the Plaintiff has been concurrently accepted by the Appellate Court. The Appellate Court accordingly proceeded to dismiss the Appeal by decree dated 30 March 2024. Aggrieved by the decree passed by the Appellate Court, the Revision Applicants, who are Original Defendant Nos.1 to 5, have filed the present Revision Application.

5) Dr. Chandrachud, the learned counsel appearing for the Revision Applicants would submit that the Trial and the Appellate Courts have erred in accepting the ground of Plaintiff's bonafide requirement. He would take me through paragraphs 4 and 5 of the Plaint to demonstrate that Plaintiff's original pleaded case was that he and his sons were carrying on business of dairy farming and milk trading and in absence of availability of premises for conduct of business, they were forced to hawk door to door for selling milk. That by the time, Plaintiff led his evidence, he was 90 years of age and gave admission of not conducting any business. He gave specific admission that his son was not doing the business of milk. He further deposed that the pleading in the plaint about his 2 sons selling milk by hawking door to door was erroneous and sought to attribute the said statement in the plaint and the affidavit of examination-in-chief to his advocate. Dr. Chandrachud would accordingly submit that Plaintiff's pleaded case of bonafide requirement got completely disproved by the admissions given by him in the cross-examination. That once it was proved that Plaintiff himself was not conducting any business nor his sons were selling milk by hawking door to door, the bonafide requirement in respect of the suit premises could not be established and therefore the Small Causes Court ought to have dismissed Plaintiff's suit. He would submit that the need must

continue till decision of all proceedings including the present Revision Application. In support he would rely upon judgment of this Court in Natwarlal Shamji Gada Versus. Vinay Raghunath Deshmukh and others¹.

6) Dr. Chandrachud would draw my attention to the application filed by the landlord's son-Daroga Chandrabali Shukla on 2 January 2024 settling the dispute with the Defendants. He would submit that the bonafide need of one of the sons has thus come to an end and in absence of any evidence on record that the younger son now does any business of dairy farming or milk selling, his bonafide requirement cannot be said to have been established.

7) Dr. Chandrachud would further submit that Plaintiff has secured a decree in respect of another premises in R.A.E. & R. Suit No.331/749 of 2003 by pleading the same bonafide requirement. That though the decree was passed on 27 November 2013, the same has not been executed and the execution proceedings were allowed to be dismissed for default by the Plaintiff on 22 October 2021. That Plaintiff cannot be permitted to give up execution of the decree passed in another proceeding and continue to press the bonafide requirement in the present proceedings. He would accordingly pray for setting aside the impugned decrees passed by the Trial Court as confirmed by the Appellate Court.

8) The Revision Application is opposed by Mr. Singh, the learned senior advocate appearing for Respondent/Plaintiff. He would submit that the Plaintiff has fully proved bonafide requirement

¹ 2024 SCC Online Bom 2544

as pleaded in the plaint. That it is well established that Plaintiff and both his sons are engaged in the business of dairy farming and selling milk and therefore their requirement of suit premises for conduct of dairy business is both bonafide as well as reasonable. That there is nothing on record to indicate that Plaintiff or his sons possessed any alternate premises for conduct of their business. He would submit that a stray and inconsistent admission given by the Plaintiff at the age of 90 years cannot be read in isolation and upon holistic consideration of the entire evidence led by the Plaintiff, the bonafide requirement of his two sons is clearly made out in the present case. That the Appellate Court has rightly ignored the alleged admission given by Plaintiff about his son not selling milk by hawking door to door having regard to the advanced age of the Plaintiff. He would submit that the bonafide requirement has been upheld concurrently by the Trial and the Appellate Courts and therefore there is no warrant for interference in such concurrent findings in exercise of revisionary jurisdiction by this Court. So far as the decree passed in R.A.E. & R. Suit No.331/749 of 2003 is concerned, Mr. Singh would submit that the said decree is passed only against Defendant No.1 and not against Defendant Nos.2 to 5 therein who actually possessed the premises involved in that suit. That therefore Plaintiff is unable to execute the said decree against Defendant No.1 and the decree is subject matter of challenge before the Appellate Court. So far as the contention of Respondent No.1(a)-Daroga Chandrabali Shukla settling the suit before the Appellate Court is concerned, Mr. Singh would submit that the settlement has been rejected by the Appellate Court. Mr. Singh would accordingly pray for dismissal of the Revision Application.

9) Rival contentions of the parties now fall for my consideration.

10) Though the suit was initially filed seeking eviction of the Defendants on variety of grounds, the eviction decree was passed on twin grounds of bonafide requirement of the Plaintiff and breach of conditions of tenancy. However, the Appellate Court has negated the ground of breach of condition of tenancy and has accepted only the ground of bonafide requirement. Thus, the suit is ultimately decreed on solitary ground of bonafide requirement of the Plaintiff. Therefore, the short issue that arises for consideration is whether the Trial and Appellate Courts have committed any palpable error in decreeing the suit on the ground of Plaintiff's bonafide need.

11) The pleadings relating to the ground of bonafide requirement are to be found in paragraphs-4, 5 and 6 of the plaint, which read thus:

4. The Plaintiff says that the suit premises requires to the Plaintiff and his family members for the use, occupation and for carrying on the business in the suit premises. The Plaintiff says that there is no premises in entire Bombay to the Plaintiff and his family members for carrying on the business of Dairy farming by keeping the Buffalows. The Plaintiff says that the Plaintiff himself is carrying on the business of Milk by hawking door-to-door as there is no premises available to him. The Plaintiff says that the Plaintiff is having two sons, namely (1) DAROGA CHANDRABALI SHUKLA, aged 54 years, and (2) BRIJBHUSHAN CHANDRABALI SHUKLA, aged 35 years. The Plaintiff says that his sons were also carrying on the business of Milk with him by hawking door-to-door as there is no premises available to them. The Plaintiff says that it is very difficult to the Plaintiff and their family members to earn and perform their livelihood by the said business of Milk. The Plaintiff says the Plaintiff requires the suit premises reasonably and bonafidely for the use, occupation and possession and for carrying on the business to him and his family members in the suit premises.

5. The Plaintiff says that there is large family of the Plaintiff. The Plaintiff says that his first son SHRI. DAROGA CHANDRABALI SHUKLA is having three sons viz. (1) SANTOSH DAROGA SHUKLA, (2) SHASHIKANT DAROGA SHUKLA and (3) BABLOO DAROGA SHUKLA. The Plaintiff says that similarly his second son SHRI. BRIJBHUSHAN CHANDRABALI SHUKLA is also having three sons and they are studying in the School. The Plaintiff says that because the Plaintiff is having no source of place to carrying on the business, therefore the Plaintiff is badly in need of the suit premises for carrying on the business by the Plaintiff and his family members as stated hereinabove.

6. The Plaintiff says that before filing of this suit the Plaintiff has tried his best to acquire the business premises within his source, means and income, but however, because of the high rate of the premises the Plaintiff and his family were unable to acquire the same. The Plaintiff says that if the decree is passed against the Defendants no hardship, loss and injury be caused to the Defendants on the contrary if the Decree for possession is refused to the Plaintiff, the Plaintiff and his family members shall be caused greater hardship, harm, injury in comparison of the Defendants. The Plaintiff says that the Plaintiff is entitled to the decree for possession of the suit premises against the Defendants on this ground alone.

12) The suit premises comprise of a Stable for buffaloes and it appears that it had 30 *khilas* for tethering of buffaloes in addition to a godown and open space. There is no dispute to the position that Plaintiff himself was in the business of dairy farming. Plaintiff pleaded that both his sons-Daroga and Brijbhushan were also involved in the family business of dairy farming and milk trading. There is nothing on record to indicate that either Plaintiff or any of his sons were engaged in other profession/occupation or business. Thus, the bonafide requirement expressed by the Plaintiff was for the purpose of conducting his own business in the suit premises. Defendants have failed to establish that Plaintiff or any of his sons had any other premises for conduct of their business.

13) The sheet anchor of Dr. Chandrachud's submission is the admissions given by the Plaintiff in his cross-examination. It appears that the deposition of Plaintiff was recorded during June to September 2006. The relevant admissions given by the Plaintiff in his cross-examination are as under:

Now I am doing nothing. It is not true that I do not require the suit premises for my own requirements. I have two sons by name Daroga and other Brij-bhushan. My elder son is aged about 56 to 57 years. **My elder son is selling Raw milk, (Chick). They have no buffalo or cows. He is purchasing raw milk from Jogeshwari from various customers.** It is not true that my son has sufficient premises in his possession and he has its stable in Jogeshwari. There is stable in Andheri which is suit property. I have no knowledge about the income of my son Daroga. It is not true that income of my son is 10,000/- to 15,000/- p.m. **My another son Brij-bhushan is also in the same profession. He is also bringing raw milk from Jogeshwari.** It is not true that I am deposing false that my two sons are doing the business of selling raw milk. **It is not true that my two sons are selling milk by hawking door to door. My son is not doing business of milk however, my advocate might mentioned in my affidavit as examination in chief that my sons are doing business of selling milk by hawking door to door.** I know contents of affidavit. Witness volunteers that affidavit is prepared by my advocate as per my instruction. The meaning of the prayer clauses of the plaint are same which I have mentioned in the plaint. **My both the sons are residing in chawl no.2. They are residing separately. I am residing with my younger son. My two sons are residing separate and they are cooking food separately.** I do not know whether the income of my both sons from separate business. At present they are doing their separate business. It is not true that I do not require the suit premises for their business.

(emphasis and underlining added)

14) Thus, the Plaintiff admitted during the course of his cross-examination that '*It is not true that my two sons are selling milk by hawking door to door. My son is not doing business of milk however, my advocate might mentioned in my affidavit as examination in chief that my sons are doing business of selling milk by hawking door to door*'. According to Dr. Chandrachud, the entire pleaded case of the

Plaintiff was that the suit premises were required to avoid selling of milk by Plaintiff and his two sons by hawking door to door. That Plaintiff admitted that he was not conducting any business and once it got proved that both his sons were not actually selling milk by hawking door to door, the entire bonafide requirement sought to be pleaded in the plaint got disproved. I am unable to agree. As observed above, Plaintiff and his 2 sons are admittedly engaged in the business of dairy farming and milk selling. The need expressed in the plaint was to conduct the business of dairy farming by keeping buffaloes in the suit premises. Thus, the main need expressed in the plaint was that Plaintiff and his two sons were unable to keep buffaloes for the activity of dairy farming. The facet of Plaintiff and his sons selling milk by hawking door to door was added only to suggest that on account of lack of space for keeping buffaloes for dairy farming business, the trio had no option but to sell milk by hawking door to door. Therefore, even if it is admitted that as on the date of deposition of the Plaintiff, he or his two sons were indeed not hawking milk door to door, the same did not mean that the Plaintiff or his sons did not require the suit premises for keeping buffaloes for dairy farming business. The admission of non-hawking door to door for selling milk would at the most imply non-conduct of any earning activity by the two sons, but such admission would still maintain the express need of space for keeping buffaloes for dairy farming business. In any case, the witness deposed even in the cross examination that both of his sons were bringing milk from Jogeshwari and selling the same. Whether they went door to door for delivery of milk or whether they sold milk and milk products to customers from one place becomes irrelevant so long as business of dealing in milk and milk products is established. Also the age of the

witness was 90 years when he deposed before the Court. In my view, therefore a stray admission given by the Plaintiff in his cross-examination possibly due to his old age, does not enure to the benefit of the Defendants. The Appellate Court has rightly brushed aside the said admissions, by considering the advanced age of the Plaintiff and by having recourse to holistic reading of his entire evidence. After considering the entire evidence of the Plaintiff, it cannot be concluded that he gave any admissions to infer possible absence of any requirement by him or any of his two sons.

15) In my view, therefore the bonafide requirement of the Plaintiff and his two sons is clearly established and there is no patent error on the part of the Trial and the Appellate Courts in decreeing the suit on the ground of bonafide requirement.

16) Reliance by Dr. Chandrachud on the judgment of this Court in *Natwarlal Shamji Gada* (supra) does not assist the case of the Revision Applicants. The judgment is relied upon in support of his contention that the need must continue throughout the proceedings. There can be no dispute about this proposition. However, the evidence on record establishes existence of bonafide need of Plaintiff's second son, Brijbhushan Shukla even during pendency of the present proceedings.

17) Though Dr. Chandrachud has relied upon the decree passed in R.A.E. & R. Suit No.331/749 of 2003 passed on 27 November 2013, Mr. Singh has clarified the position that the Plaintiff has not been able to execute the said decree on account of the operative direction of the Court ordering eviction of only

Defendant No.1 therein, though Defendant Nos.2 to 5 and other third parties are actually in possession of the premises therein. In my view, mere passing of decree in R.A.E. & R. Suit No.331/749 of 2003 is not sufficient for drawl of an inference that Plaintiff has secured possession of alternate premises. As of now, there is nothing on record to indicate that Plaintiff or his sons have actually succeeded in securing possession of the premises involved in the said suit. Also Revision Applicants apparently did not raise this issue before the Trial or the Appellate Courts. Therefore, the concurrent decrees passed by the Trial and the Appellate Courts in the present proceedings cannot be not be disturbed by relying on unexecuted decree passed in R.A.E. & R. Suit No.331/749 of 2003.

18) The twist is added in the present proceedings on account of filing of application by Respondent No.1(a)-Daroga Chandrabali Shukla, who is the elder son of the Plaintiff. As observed above, Plaintiff had pleaded bonafide requirement of both the sons including Daroga Chandrabali Shukla, who was also involved in the business of dairy farming. It appears on 2 January 2024, Daroga Chandrabali Shukla filed an application pointing out that he is settling the proceedings outside the Court with the Defendants. However, before the Appellate Court, Daroga Chandrabali Shukla was one of the Respondents (*and not the only Respondent*) which is a reason why the Appellate Courts appears to have merely made an endorsement of '*seen and filed*' on the said application. This is particularly because Respondent No.1(b)-Brijbhushan Chandrabali Shukla opposed the Appeal and supported the decree. Upon being queried, Mr. Singh admits that even the present proceedings are contested only by Respondent No.1(b) and that Respondent No.1(a)-Daroga

Chandrabali Shukla has not showed any interest in defending the Revision Application. It appears that by the time evidence was recorded on 23 September 2006, Daroga and Brijbhushan had already separated their residences and businesses. Plaintiff was residing with Brijbhushan. It therefore appears that Daroga no longer desires eviction of the Defendants from the suit premises for his own bonafide requirement. The issue is whether, Respondent No.1(b)-Brijbhushan needs to be handed possession of the entire suit premises when the pleaded and proved case was for bonafide need of both the brothers. Under the provisions of Section 16(2) of the M.R.C. Act, while granting a decree for eviction under Clause-(g) of sub-section (1) of Section 16, the Court also needs to apply its mind while considering the issue of hardship as to whether decree can be passed in respect of part of the premises. Sub-section (2) of Section 16 provides thus:

(2) No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1), if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only.

Explanation.- For the purposes of clause (g) of sub-section (1), the expression "landlord" shall not include a rent-farmer or rent-collector or estate-manager.

(emphasis and underlining added)

19) It is a settled position of law that bonafide requirement of the Plaintiff must continue throughout the proceedings. In the present case, the original Plaintiff has passed away. However, he had pleaded bonafide requirement of both his sons, Daroga and Brijbhushan.

Now Daroga does not desire eviction of the Defendants and accordingly his bonafide requirement no longer subsists. In that view of the matter, in my view, it would be appropriate to have a recourse to provisions of sub-section (2) of Section 16 by ordering partial eviction of the Defendants from the suit premises. Since Brijbhushan alone requires the suit premises, partial decree of eviction would balance the needs of both the sides. No evidence is produced by the Plaintiff to indicate that the Defendant-tenant has alternate premises anywhere else. In my view, therefore partial decree of eviction would meet the ends of justice on account of peculiar facts and circumstances of the present case.

20) The Revision Application accordingly partly succeeds, and I proceed to pass the following order:

- (i) The judgment and decree dated 6 September 2013 passed by the Small Causes Court in R.A.E. Suit No.196/479 of 2003 as confirmed by the Appellate Bench of the Small Causes Court by judgment and order dated 30 March 2024 passed in Appeal No. 48/2013 is modified to the extent that Defendants shall handover possession of half portion of the suit premises to Respondent No. 1(b) - Brijbhushan Chandrabali Shukla by retaining the other half portion with the original tenant(s).
- (ii) The Defendants shall handover possession of half portion of the suit premises to Respondent No.1(b)- Brijbhushan Chandrabali Shukla on/or before 28 February 2025.

21) With the above directions, the Revision Application is partly allowed and disposed of.

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[SANDEEP V. MARNE, J.]