

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.564 OF 2024

Pranshankar Bhayashankar
Rajguru

....Applicant

V/s.

Laxmikant Murlidhar Sharma and
Ors.

....Respondents

Mr. Rakeshkumar R. Tiwari *for the Applicant.*

Ms. Shweta Sharma *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 24 October 2024.

Judgment:

1) Revisionary jurisdiction of this Court is invoked under the provisions of Section 115 of the Civil Procedure Code, 1908 (**Code**) to set up a challenge to the Judgment and Decree dated 19 July 2024 passed by the Appellate Bench of the Small Causes Court dismissing appeal No.5 of 2023 filed by the Revision Applicant and confirming the eviction decree dated 17 December 2022 passed by the Small Causes Court in R.A.E. Suit No.24 of 2004.

2) Plaintiffs and Defendant No.2 claim to be owners and occupiers of property known as 'Solicitor's Compound' situated at land bearing C.T.S. No.436-C of Malad (East) at Solicitor Road, Off. Rani Sati Marg, Quarry Road, Malad (East), Mumbai -400 097. Defendant

No.1 inducted as a tenant in respect of room No. 2 situated in the said compound admeasuring 200 sq.ft. for monthly rent of Rs.19.38 by Plaintiffs and Defendant No.2. Plaintiffs filed R.A.E. Suit No.24 of 2004 seeking recovery of possession of the suit premises on the ground of *bonafide* requirement of Plaintiffs and Defendant No.2. Plaintiffs averred in the Plaint that family of Plaintiffs and Defendant No. 2 is very large and the premises in their possession consisted of only four single rooms collectively admeasuring 1000/1100 sq.ft. It was averred that Plaintiff No.1 has one married daughter and two married sons which forced him to acquire additional accommodation in building opposite Solicitor's bungalow where two married sons of Plaintiff No.1 reside while Plaintiff continued to reside in single room of Solicitor's bungalow. That Plaintiff No.2 has three grown up daughters and out of which one is married and the two unmarried daughters are over 21 years of age. Plaintiff No.2 also has two grown up unmarried sons over 21 years of age, whose marriages were being delayed for want of availability of sufficient accommodation. It was further averred that Plaintiff No.3 had one grown up daughter of marriageable age and one married son and that Plaintiff No.3 was required to acquire additional accommodation in a building opposite Solicitor's bungalow where he and his family reside. That Plaintiff No.4 has one school going son aged 15 years and one college going daughter requiring additional premises for their residence. It was further averred that Defendant No.2, who is sister of Plaintiffs had two married sons, who themselves had two sons and one daughter at the time of filing of the Suit. That the son of Defendant No.2- Alok Sharma and his family were required to reside on leave and license basis at Tapovan across Wester Express Highway, Malad (east) and they were not in a position to bear the license fees and were therefore required to leave the said premises and were residing in

a room in the office premises belonging to the Plaintiff No.3 at Motibaug Apartments. That second son of Defendant No.2 Anupam Sharma was residing in a room on ground floor of Solicitor's bungalow with his family.

3) On the above broad *bonafide* requirements, Plaintiffs sought eviction of Defendant No.1 pleading that he and his family members had secured to big flats on ownership basis at Panchsheel Society, Raheja Township at 'Tapovan View' building. Though the allegations of unwillingness to pay rent, enclosure of verandah and non-user were also raised it appears that the Suit has ultimately contested on the ground of *bonafide* requirement alone.

4) Defendant No.1 appeared in the Suit and filed his written statement contesting the Suit by amending the written statement. He also raised a plea that the land on which the suit premises is situated is declared as slum and that therefore the Small Causes Court did not have jurisdiction to entertain the Suit. It appears that Defendant No.1 also filed additional written statement.

5) After considering the pleadings of the parties, Small Causes Court framed issues relating to *bonafide* requirement of Plaintiffs and Defendant No.2 and comparative hardship. Issue relating to maintainability of the Suit was also framed. After amendment of the written statement, issue relating to Suit being barred by the provisions of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 was also framed. Parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, Small Causes Court proceeded to

decree the Suit by accepting the ground of *bonafide* requirement and by answering the issue of comparative hardship in favour of Plaintiffs and against the Defendant No.1. The Small Causes Court accordingly directed Defendant No.1 to handover possession of the suit premises to the Plaintiffs by decree dated 17 December 2022. Defendant No.1 filed Appeal No.5 of 2023 challenging the eviction decree dated 17 December 2022. The Appellate Bench of the Small Causes Court has however dismissed the appeal of Defendant No.1 by Judgment and Order dated 19 July 2024, which is the subject matter of challenge in the present Civil Revision Application.

6) I have heard Mr. Tiwari, the learned counsel appearing for Revision Applicant/Defendant No.1 and Ms. Shweta Sharma, the learned counsel appearing for the Respondents/Plaintiffs. I have also gone through the findings recorded by the Trial Court and the Appellate Court and also gone through the evidence placed on record alongwith Revision Application.

7) The short issue that arises for consideration in the present Revision Application is whether Plaintiffs prove the case of *bonafide* requirement for seeking recovery of possession of the suit premises from Defendant No.1. In the present case, Plaintiffs and their sister (Defendant No.2) are the landlords in respect of the suit premises. Therefore, *bonafide* requirement of the four plaintiffs as well as their sister was pleaded in the Plaint. Plaintiffs and Defendant No.2 occupied four rooms admeasuring about 1000/1100 sq.ft. in Solicitor's bungalow. Area in possession of Defendant No.1 is 200 sq.ft. Going by averments of the plaint, there were following family members of Plaintiffs and Defendant No.2 at the time of filing of the Suit:

Plaintiff No.1	One married daughter, two married sons
Plaintiff No.2	One married daughter, two unmarried daughters and two unmarried sons.
Plaintiff No.3	Two unmarried daughters and one married son
Plaintiff No.4	One son and one daughter
Defendant No.2	Two married sons.

8) As disclosed in the Complaint, two married sons of Plaintiff No.1 were residing in additional accommodation acquired in the building opposite Solicitor's bungalow. Similarly, the married son of Plaintiff No.3 was also residing in premises opposite Solicitor's bungalow. So far as Defendant No.2 is concerned, one of her sons Mr. Alok Sharma was required to take shelter in office premises at Motibaug Apartment. Except these members of the family, other members apparently reside in the Solicitor's bungalow.

9) The Trial Court has assessed the evidence on record and has arrived at a finding that there were as many as 10 to 12 members of the family of Plaintiffs and Defendant No.2 who were residing in the Solicitor's bungalow. Defendant No.1 attempted to set up a case of acquisition of additional premises by various Plaintiffs. However, as observed above, residence by some of the family members in other premises is already disclosed by Plaintiffs in the Complaint itself. Considering the factual position borne out from the evidence on record, the Small Causes Court has held that multiple members of family of Plaintiffs and Defendant No.2 were finding it inconvenient to

accommodate themselves in area admeasuring 1100 sq.ft. in Solicitor's bungalow.

10) So far as Defendant No.1-tenant is concerned, Trial Court has recorded a finding of fact that Defendant No.1 was not residing in the Suit premises for a substantial period of time. In paragraph 16 of the written statement Defendant No.1 admitted that he was residing in the premises of his sons quiet frequently. Acquisition of premises by sons of Defendant No.1 is also not under dispute.

11) In my view, the findings recorded by the Trial Court as upheld by the Appellate Court after appreciation of evidence on record relating to *bonafide* requirement of Plaintiffs do not warrant interference in exercise of revisionary jurisdiction of this Court under Section 115 of the Code. Mr. Tiwari has not been able to point out any perversity or palpable error in the concurrent findings recorded by the Trial and the Appellate Court. He has taken me through the cross- examination of Plaintiffs' witness. However, even in cross-examination Plaintiff's witness has admitted residence of 10 members residing in area of 1000 sq.ft. In exercise of its revisionary jurisdiction, this Court is not supposed to re-appreciate the evidence on record and arrive at a finding different than the one recorded by the Trial and the Appellate Courts. The conclusions concurrently reached by the Trial and the Appellate Court about need of large number of members of the family of Plaintiffs and Defendant No.2 cannot be disturbed by undertaking the exercise of re-appreciation of evidence. Defendant No.1 does not seem to be in need of the suit premises, and he is found to be residing with his sons in alternate premises. In that view of the matter decree of eviction passed

on the ground of *bonafide* requirement does not warrant interference by this Court.

12) I therefore do not find any valid reason to interfere in the concurrent decrees passed by the Trial and the Appellate Courts. The Civil Revision Application must fail. It is accordingly **dismissed**. However, considering the facts and circumstances of the present case, the Applicant/ Defendant No.1 is granted time till 31 December 2024 to vacate the suit premises subject to the condition of not creating third party rights.

[SANDEEP V. MARNE, J.]

Note: This judgment is corrected vide order dated 12 November 2024.