

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****INTERIM APPLICATION NO.9937 OF 2024****WITH****INTERIM APPLICATION (ST) NO.7086 OF 2024****WITH****CIVIL REVISION APPLICATION (ST) NO.5174 OF 2024**

Janusingh Sardarsing Chotmuradi & Ors.

....Applicants

V/s.

Arun Mahadeo Barse (since deceased) & Ors.

....Respondents

Mrs. Sunanda R. Kumbhat *a/w Mr. Kunal r. Kumbhat, for the Applicants.***Mr. Sagar Kasar,** *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.**Date : 7 AUGUST 2024.****P.C. :****INTERIM APPLICATION NO.9937 OF 2024**

1) This Interim Application is filed seeking condonation of delay in filing the Civil Revision Application. The Application is not seriously opposed by the learned counsel appearing for Respondent / Original Plaintiff.

2) For the reason stated in the application, the same is allowed. Delay in filing the Civil Revision Application is condoned.

3) Interim Application is disposed of.

CIVIL REVISION APPLICATION (ST) NO.5174 OF 2024

- 4) Revisionary jurisdiction of this Court is invoked under Section 115 the Code of Civil Procedure to set up a challenge to the Judgment and decree dated 21 September 2022 passed by the Additional District Court, Malegaon dismissing Regular Civil Appeal No.30 of 2015 and confirming the decree dated 15 January 2015 passed by the Extra Joint Civil Judge, Junior Division, Manmad in Regular Civil Suit No.56 of 2007. The Trial Court, vide decree in RCS No.56 of 2007 has directed the Applicants / Defendants to handover vacant possession of suit property to the Plaintiff.
- 5) I have heard Ms. Kumbhat, the learned counsel appearing for Applicants and Mr. Kasar, the learned counsel appearing for Respondent – Plaintiff.
- 6) After having considered the submissions canvassed by the learned counsel appearing for the parties. It is seen that, though initially eviction of the Defendants – Tenants was sought on twin grounds of bonafide requirement and unauthorized alterations and additions to the suit premises, the suit came to be decreed only on the ground of bonafide requirement. Perusal of the plaint would show that the Plaintiff pleaded presence of large family comprising of two married children 5 grand children and 4 married daughters. It was pleaded that the suit premises were required not just for the Plaintiff but also for his 3 grandsons for their business. The Trial Court accepted the ground of bonafide requirement and has also held that greater hardship would be caused to

the Plaintiff and not decreeing the suit than the Defendants. The finding of the Trial Court have been confirmed that the Appellate Court.

7) Ms. Kumbhat would submit that the Plaintiff suppressed the factum of securing possession of 3 more premises from other tenants before filing the suit. She would rely upon Judgment the Apex Court in ***Deena Nath Vs. Pooran Lal***¹ in support of her contention that Plaintiff is under obligation to disclose all the premises in his possession while seeking recovery of possession of tenant premises on the ground of bonafide requirements. There can be no dispute about this proposition and possibly Ms. Kumbhat is not entirely wrong in contending that the Plaintiff did not actually disclose passing of decrees in his favour in previously instituted suits against 3 other tenants. However, after considering the overall findings recorded by the Trial Court and the Appellate Court, I am not inclined to interfere in the concurrent findings recorded by both the Courts below only on account of Plaintiffs conduct of alleged suppression. Plaintiff admitted in the cross - examination that he secured possession of 3 more premises from other tenants before filing of the suit. The Trial and the Appellate Court have considered the said 3 premises in possession of the Plaintiff while determining the issue of comparative hardship.

8) What is most striking to note in the present case is the fact that the Defendants not only posses several properties in addition to the suit premises, the suit premises are found to be unused by the Defendants by the Appellate Court by considering the evidence of Engineer from Maharashtra State Electricity Board. The Appellate Court has accordingly recorded of findings that the Defendants are actually not

¹2001 AIR SC 2655

carrying any business of the suit premises. Though the ground of non-user was neither raised and as not been accepted, the said aspect is considered while deciding the issue of comparative hardship. It has come on record that Defendants posses various properties such as Gat No.277/278, City Survey No.377/B and City Survey No.920/2. Additionally, it has come in evidence that in the year 2018, Defendant Nos. 1A to 1C purchased property adjacent to the suit property by sale deed dated 12 September 2018.

9) There is no doubt to the position that Plaintiff has a large family of 11 persons comprising of two married children, 5 grand children. After considering the overall circumstance of the case the Trial and the Appellate Court concurrently held that the requirement pleaded by the Plaintiff is bonafide and that the facts and circumstances indicate cause of greater hardship to the Plaintiff than to the Defendant. The orders passed by the Trial Court and Appellate Court do not suffer from any palpable error for this Court to interfere in the same in exercise of revisionary jurisdiction under Section 115 of the Code.

10) In my view therefore, there is no merit in the Civil Revision Application. The same is accordingly rejected.

11) In view of the dismissal of the Civil Revision Application all pending Applications stands disposed of.

[SANDEEP V. MARNE, J.]