



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.58 OF 2024

1. Shaikh Kayyum Begum
Fakir Mohammad,
Aged: 65 years, Occ: Nil,
R/o Municipal House No.5211
Shital Colony, Govindpura,
Tq. Nagar, Dist. Ahmednagar.
2. Shaikh Altaf Fakir Mohammad
Aged: 50 years, Occ: Fitter,
R/o Municipal House No.5211
Shital Colony, Govindpura,
Tq. Nagar, Dist. Ahmednagar.
3. Shaikh Asrar Fakir Mohammad,
Aged: 46 years, Occ: Fitter,
R/o Municipal House No.5211
Shital Colony, Govindpura,
Tq. Nagar, Dist. Ahmednagar.
4. Shaikh Atik Ahmed Fakir Mohammad,
Aged: 44 years, Occ: Fitter,
R/o Municipal House No.5211
Shital Colony, Govindpura,
Tq. Nagar, Dist. Ahmednagar.
5. Ajij Fatima Riyaz Inamdar
Aged: 53 years, Occ: Household,
R/o Near Tahsil, Rahuri
Tq. Rahuri, Dist. Ahmednagar.

..Applicants
(Orig. Defendants).

Versus

Shaikh Mohinoddin Ibrahim,
Aged: 51 years, Occ: Business,
R/o D-2, Duyash Complex,
Shanti Construction, Govindpura,
Tq. Nagar, Dist. Ahmednagar.

..Respondent
(Orig. Plaintiff)

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Mr. D. R. Adhav h/f Mr. G. B. Rajale, Advocate for the Applicant.
Smt. C. S. Deshmukh h/f Mr. P. P. Dawalkar, Advocate for the
Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.
DATE : 03rd MARCH, 2025.

ORDER:-

1. The applicants impugn judgment and order dated 10.08.2023 passed by District Judge-3, Ahmednagar in Regular Civil Appeal No.293/2018, thereby upholding judgment and decree dated 30.06.2018 passed by Civil Judge, Junior Division at Ahmednagar in Regular Civil Suit No.235/2012. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent/plaintiff instituted Regular Civil Suit No.235/2012 seeking relief of possession, recovery of arrears of rent and fixation of rent amount under provisions of Maharashtra Rent Control Act, 1999. The plaintiff contends that suit property is situated in cantonment area. It was allotted to his father on tenure lease basis. After demise of his father, he became owner of suit property. The suit property was let out to Shaikh Fakir Mohammad Shabuddin i.e. husband of defendant no.1 and father of defendant nos.2 to 5. The relationship as landlord and tenant has been proved by judicial pronouncement in Regular Civil Suit No.98/1985, that was filed by Shaikh Fakir Mohammad Shabuddin in respect of suit property. The decree passed in that proceeding has been confirmed upto Supreme Court. In pursuance of the said decree, possession of the property described by letters A, B, C and

D admeasuring 30 ft. × 20 ft., has been handed over to the defendants. Similarly, in Civil Miscellaneous Application No.262/1985 interim standard rent of Rs.50/- per month has been fixed under order dated 10.12.1985. However, defendants failed to pay rent and are, therefore, defaulters.

3. The plaintiff further contends that he is in business of automobiles under name and style as Modern Automobiles. He holds Shop Act License and wish to extend his business. He has applied to competent authority for construction permission. The defendants are having alternate shop no.1 at Pooja Complex, Chandni Chowk and doing business of motor repairing. The plaintiff is in bonafide need of suit premise, but defendants refused to hand over possession. Ultimately, plaintiff issued legal notice dated 06.10.2009 for arrears of rent and possession. The defendants gave false reply dated 16.10.2009.

4. The defendants refuted plaintiff's claim, firstly disputing description of suit property. The defendants further contend that plaintiff is claiming exorbitant rent, although he has not provided any facility. The plaintiff has sufficient space for his own business. He had let out open space to defendants, therefore, provisions of Maharashtra Rent Control Act, 1999 are not applicable to suit property.

5. The Trial Court framed issues based on pleadings of parties and concluded that in light of previous judicial pronouncements between parties, in respect of selfsame property, defendants are estopped from disputing description of property and applicability of provisions of Maharashtra Rent Control Act. The Trial Court found that the defendants are defaulters of agreed rent and accepted plaintiff's bonafide need of suit property for expansion of his business. Consequently, decreed suit directing defendants to hand over vacant and peaceful possession of suit property to plaintiff and pay arrears of rent with permitted increases as fixed at the rate of Rs.500/-.

6. The defendants/tenants assailed Trial Court's judgment and decree passed in Regular Civil Appeal No.293/2018 in Appeal before District Judge-3, Ahmednagar, who pleased to dismiss same upholding judgment and decree as passed by Trial Court.

7. Mr. Adhav, learned Advocate appearing for the applicants submits that description of suit property is not correct. Both the Courts have failed to appreciate aforesaid important aspect of matter in its proper perspective. According to him, open space was given in possession of defendants. Therefore, suit itself was not maintainable under provisions of Maharashtra Rent Control Act, 1999. He would further submit that findings recorded by Courts below on the point of default and bonafide requirements of plaintiff

are improper and contrary to evidence on record. According to him, impugned decree is not in consonance with Sections 15 and 16 of the Maharashtra Rent Control Act.

8. Per contra, Mrs. Deshmukh, learned Advocate holding for Mr. Dawalkar, learned Advocate appearing for respondent submits that defendants are estopped from disputing relationship between parties as landlord and tenants in view of decree passed in previous suit, which has been confirmed upto Supreme Court. She would point out that in previous suit defendants have recovered possession from plaintiff asserting their right as tenant over suit property. The description of property in previous suit and present suit is same. Therefore, defendants are estopped from disputing description of property. She would submit that Courts below have recorded concurrent findings of facts. This Court while exercising revisional jurisdiction is not expected to re-appreciate and re-assessed evidence and disturb findings so recorded. In support of her contentions, she relies upon judgment of Supreme Court of India in case of ***Hindustan Petroleum Corporation Vs. Dilbahar Singh***¹. She would further rely upon Full Bench Judgment of this Court in case of ***Babulal Fakirchand Agrawal Vs. Suresh Kedarnath Malpani***² to contend that while interpreting word ‘readiness and willingness to pay’ provisions of

¹ 2014 AIR SCW 5018.

² (2017) 4 BOM CR 495.

Section 15(3) mandating tenant to pay in Court regularly standard rent and permitted increases till disposal of suit are to be kept in mind.

9. Having considered submissions advanced, it can be observed that Shaikh Fakir Mohammad Shabuddin was put into possession of property as tenant by father of plaintiff. Shaikh Fakir Mohammad Shabuddin had instituted Regular Civil Suit No.98/1985 seeking prohibitory injunction against plaintiff, wherein suit property was described by letters A, B, C and D. Similarly, he had filed Civil Miscellaneous Application No.262/1985 for fixation of standard rent. Shaikh Fakir Mohammad Shabuddin was declared as lawful tenant in respect of property described by letters A, B, C, D and he was entitled to hold possession of area admeasuring 30 ft. X 20 ft.. The said decree has attained finality. Similarly, standard rent @ Rs.50/- per month was fixed in proceeding by competent authority under Rent Act. The description of suit property in present suit matches with description given in Regular Civil Suit No.98/1985. The Trial Court rightly observed that now defendants are estopped from raising plea contrary to previous declaration, particularly as regards to description of property as well as applicability of provision of Maharashtra Rent Control Act. The Appellate Court concurred with observations of Trial Court in this regard.

Therefore, contentions of applicants/defendants on aforesaid aspect deserves to be rejected.

10. So far as issue as to default in payment of rent is concerned, Trial Court observed that interim rent was fixed @ Rs.50/- in Civil Miscellaneous Application No.262/1985. The rent receipts are placed on record at Exhibit-95. The Trial Court found that there are no receipts for the years 1987, 1990, 1991, 1998, 2002, 2005 and 2006 defendants failed to pay rent for missing years within ninety days of institution of suit in terms of Section 15(3) of the Maharashtra Rent Control Act. Prior to that no regular payment made on 10th day of every months.

11. Similarly, on the issue of bonafide requirement in terms of Section 16(1)(g) and (l), Trial Court on appreciation of evidence found that plaintiff is running business of automobiles. With intention of expansion of his business, he applied for construction permission. He is already running his business in part of property and suit property would be necessary for expansion. On other hand, plaintiff has brought evidence on record that defendant no.4 is having separate commercial plot and where defendants are having common business.

12. As such, relying upon catena of judgments, particularly in case of **Rasiklal S/O. Revchand Shah vs Paraskumar S/O.**

Balchand Thole³ it is held that plaintiff proved his bonafide requirement, so also issue of comparative hardship is answered in favour of plaintiff. The Courts have deeply considered aforesaid aspect of the matter and concluded that plaintiff's requirement for development of his business is his prerogative. The evidence in the form of Shop Act License of Modern Automobiles and evidence of witness from Town Planning Department show that plaintiff has proved his case on the point of bonafide requirement. As rightly pointed out by Mrs. Deshmukh, this court is not expected to delve into re-appreciation of evidence, particularly when concurrent findings of facts are recorded by Courts below. It is well settled that purpose of revisional jurisdiction is for keeping Tribunal or sub-ordinate Courts within bounds of their authority and make them to act according to law, procedure established by law and well defined principles of justice.

13. In facts of present case, no perversity is discernible in approach of Courts below. Hence, no case is made out to invoke revisional jurisdiction to disturb concurrent findings recorded by Courts below.

14. Consequently, Civil Revision Application stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

³ 2015 (1) Mh. L.J. 382.

15. After pronouncement of this order, Mr. Adhav, learned Advocate for applicants requests for continuation of interim protection as granted by this Court for four weeks. However, in light of concurrent findings on point of bonafide requirement of respondent as well as default in payment of rent by applicants, such request cannot be countenanced.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025