



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CIVIL REVISION APPLICATION NO. 60 OF 2021

APPLICANT : Yeshwant Mahadeo Tapale, Aged
 (Ori. Defendant) about 56 Years, Occ. Screen Printer,
 R/o. Hinganghat, Tahsil Hinganghat,
 District : Wardha.

//VERSUS//

NON-APPLICANTS : 1. Shivprakash Mangilal Dave, Aged
 (Ori. Plaintiffs) about 66 Years, Occ. Business, R/o.
 Surat, Tah. Distt. Surat (Gujarat).
 2. Narmadashankar Mangilal Dave,
 Aged about 63 Years, Occ. Service,
 R/o. Hinganghat, Tahsil Hinganghat,
 Distt. Wardha.

Mr. Anjan De, Advocate for the Applicant.

Mr. M.P. Kariya, Advocate with Ms. Parita Lakhani, Advocate for
 the Non-applicants.

CORAM : G. A. SANAP, J.

RESERVED ON : 18th OCTOBER, 2024.

PRONOUNCED ON : 18th FEBRUARY, 2025.

JUDGMENT

. In this revision application, challenge is to the
 judgment and decree dated 27th April, 2018, passed by the learned
 District Judge-1, Hinganghat, whereby the learned District Judge

allowed the appeal filed by the non-applicants (original plaintiffs) against the judgment and decree dated 23rd January, 2015, in Regular Civil Suit No.26/2007. In this judgment, the parties would be referred by their nomenclature in the plaint. The applicant is the original defendant. The non-applicants are the original plaintiffs. The suit filed by the plaintiffs was dismissed by the learned 3rd Joint Civil Judge (Junior Division), Hinganghat. In the appeal, the learned District Judge-1, Hinganghat, set aside the judgment and decree and allowed the appeal. The learned District Judge-1 granted the decree for eviction of the defendant on the ground of *bona fide* requirement as provided under Section 16(1) (g) of the Maharashtra Rent Control Act, 1999 (for short, “the Maharashtra Rent Control Act”).

02] The facts are as follows:

 The plaintiffs are the owners of the house situated at Neharu Ward, Hinganghat, bearing House No.206 (old No.168 and recent M.H. No.207) on Nazul Plot Nos.39/1 and 40/2. The defendant is the tenant of the portion of this house admeasuring about 20x30 ft. The portion of the house in possession of the defendant would hereinafter be referred to as the “suit premises”. The suit premises has been used for the purpose of doing business

since 1991. The father of the plaintiffs inducted the defendant in the suit premises as a tenant. The father of the plaintiffs died on 17th August, 2001. The plaintiffs and their two sisters became the owner of the suit premises. Plaintiff No.1 is residing at Surat (Gujarat). Plaintiff No.2 has been looking after the suit premises. It is stated that, in the night of 3rd February, 2006, there was a fire in the suit premises. The material part of the suit premises was destroyed. The suit premises has thus become unsafe for occupation.

03] According to the plaintiffs, plaintiff No.2 is doing service at Mohta Mill. He has been residing in the accommodation provided by the Company. The plaintiffs have proposed to construct a new house. During the pendency of the suit, plaintiff No.2 retired on 15th July, 2011. He has been employed as a retainer. It is a temporary job. The plaintiffs do not have a suitable premises for residence at Hinganghat. Similarly, they have no premises for starting their business for the livelihood of plaintiff No.2. The plaintiffs are in need of suit premises to provide a source of livelihood to plaintiff No.2. They do not have alternative accommodation for starting the business. The remaining house in their possession is used for residential purpose. It is their case that

the defendant is having alternative accommodation in Jawaharlal Nehru Ward, Hinganghat. He can start his business there. The tenancy of the defendant was, therefore, terminated *vide* notice dated 11th February, 2006. The defendant did not vacate the suit premises after receipt of the notice. The plaintiffs, therefore, filed a suit for eviction of the defendant on the ground of reasonable and *bona fide* requirement. According to the plaintiffs, the defendant is having alternative shop premises, and therefore he would not suffer hardship in case a decree is passed.

04] The defendant opposed the suit. He has not disputed his relations with the plaintiffs as a tenant. He has stated that he has been doing business in the suit premises. He is an interior decorator. He has established his business in the premises since 1987. He has earned the goodwill for his business carried out from the suit premises. The defendant contended that the plaintiffs are having suitable alternative premises for doing the business as well as for the purpose of residence. The plaintiffs are financially well off. It is contended that, if he is required to vacate the premises, then he would suffer greater hardship, inasmuch as he does not have alternative premises, and the change of place of business would affect the goodwill of his business.

05] The parties adduced the evidence in support of their rival contentions before the learned 3rd Joint Civil Judge (Junior Division), Hinganghat. The learned 3rd Joint Civil Judge (Junior Division), on consideration of the evidence, recorded a finding that the requirement of the plaintiffs is not reasonable and *bona fide*. The learned 3rd Joint Civil Judge (Junior Division) also recorded a finding that the defendant would suffer greater hardship in case a decree for eviction is passed in favour of the plaintiffs. In the appeal filed against this judgment and decree, the learned District Judge-1 allowed the appeal and set aside the judgment and decree. The learned District Judge-1 decreed the suit by holding that the requirement of the plaintiffs is reasonable and *bona fide*. The suitable alternative premises is available with the defendant for doing the business, and therefore he would not suffer any hardship. The defendant has come before this Court in revision against this judgment and decree passed by the learned District Judge-1.

06] I have heard Mr. Anjan De, learned advocate for the applicant/defendant and Mr. M. P. Kariya, learned advocate for the non-applicants/plaintiffs. Perused the record and proceedings.

07] Learned advocate for the applicant/defendant

submitted that the plaintiffs have suppressed material documents from the Court with regard to the availability of residential premises elsewhere in the city of Hinganghat. Learned advocate submitted that the area of the house in possession of the plaintiffs is 2600 sq. ft. The premises occupied by the defendant are admeasuring 20x30 ft. Learned advocate submitted that the plaintiffs have ample premises for the purpose of residence as well as for starting the business. The plaintiffs have not placed on record any reason for not using the remaining part of the house, where the suit premises is situated, for doing the business. Learned advocate submitted that the admission given by the defendant with regard to the availability of the alternative premises at Neharu Ward, Hinganghat, was misconceived. The map at Exh.136 admitted by the defendant was not proved by leading cogent evidence. Learned advocate submitted that even if it is assumed that on the ground floor of the house constructed by the defendant at Jawaharlal Nehru Ward, Hinganghat, some shops are available, the same would not be sufficient and suitable for the business of the defendant. Learned advocate, relying upon a decision in the case of *Adil Jamshed Frenchman Vs. Sardar Dastur School Trust [AIR 2005 (SC) 996]*, submitted that in a suit filed on the ground of bona fide requirement, the Court has to find out whether the need

is natural, real, sincere and honest. In this case, it is held that the need of the premises by the landlord must be proved to be natural, real, sincere and honest. Learned advocate submitted that the learned District Judge-1 has failed to properly appreciate the evidence adduced by the parties and has come a wrong conclusion.

08] Learned advocate for the non-applicants/plaintiffs submitted that the defendant was guilty of suppression of material facts vis-a-vis the availability of suitable alternative premises with him for doing the business. Learned advocate submitted that the map at Exh.136 is the sanctioned map, and the same has been admitted to be the correct map of the newly constructed house of the defendant. Learned advocate submitted that the admitted fact need not be proved. It is submitted that on this count the finding recorded by the learned Civil Judge (Junior Division) was corrected by the learned District Judge-1, while deciding the appeal. Learned advocate submitted that the landlord is the best judge of his requirement. The tenant cannot dictate the landlord how and in what manner he should live or carry on his business. Learned advocate submitted that the remaining house in possession of the plaintiffs is used for the residential purpose, and therefore the same cannot be converted into commercial use. The suit premises is the

business premises. Learned advocate submitted that plaintiff No.2 has no source of livelihood, and therefore he would like to start his own business from the suit premises. Learned advocate submitted that the availability of the residential premises, admeasuring about 600 sq. ft at Mahavir Ward, would not be relevant while deciding the requirement of the plaintiffs of the suit premises for starting the business. Learned advocate submitted that the requirement has been proved by the plaintiffs to be reasonable and *bona fide*. Learned advocate submitted that no hardship at all would be caused to the defendant, inasmuch as the defendant has empty alternative business premises in his possession.

09] The plaintiffs are the landlords of the defendant. The requirement of the premises for starting the business by plaintiff No.2 has been pleaded. It is trite that the burden of proof lies on the landlord to prove that the requirement of the premises is reasonable and *bona fide*. Once the landlord proves that his requirement is reasonable and *bona fide*, then the Court has to decide the issue of hardship either to the tenant or to the landlord, either by granting a decree or by refusing to grant a decree. It is to be noted that the availability of other reasonable accommodation with the landlord and the tenant assumes importance while

deciding the factum of hardship. The Hon'ble Apex Court in the case of *Mrs. Meenal Eknath Kshirsagar Vs. M/S Traders & Agencies & Anr. [1996 (5) SCC 344]* has held that the landlord is the best judge of his residential or business requirement. It is for him to decide how and in what manner he should live or carry on his business. If the landlord desires to beneficially enjoy his own property, when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient, it is not for the Court to dictate the landlord to continue to occupy the tenanted premises or any other premises. In my view, this settled legal position is required to be borne in mind while addressing the issue arising in this case.

10] The learned District Judge-1, on appreciation of the evidence of the plaintiffs on the point of reasonable and *bona fide* requirement, has recorded a categorical finding that the requirement of the premises by the plaintiffs for starting the business from the suit premises by plaintiff No.2 is reasonable and *bona fide*. I have minutely perused the evidence on record. I have also gone through the reasons recorded by the learned District Judge-1 as well as by the learned 3rd Joint Civil Judge (Junior Division) on this point. On going through the record, I am

satisfied that the learned District Judge-1 has properly appreciated the evidence. The learned District Judge-1 has considered the facts and evidence in juxtaposition with the settled legal position.

11] It is undisputed that plaintiff No.2 has retired from service. He has stated that he does not have other business premises where he could start and establish his business. The plaintiffs, by leading cogent and reliable evidence, have proved that their requirement of the suit premises is reasonable and *bona fide*. The suit premises is situated in a market area. The plaintiffs cannot be compelled to use the residential premises as business premises. Such change of user would be contrary to the law. The change of user can be made with the permission of the Authorities. It is the case of the plaintiffs that the house is in a dilapidated condition. It is not fit for the residence as well as for starting the business. The plaintiffs have established that, after the incident of fire, the defendant has carried out major repairs in the premises. He has been doing the business from the suit premises.

12] On going through the oral and documentary evidence, I am satisfied that the plaintiffs have proved that their requirement of the premises is reasonable and *bona fide*. I do not see any reason to doubt the requirement of the premises by the plaintiffs. It is for

the plaintiffs to decide the proper premises for starting the business. In such a matter, the Court cannot dictate the landlord to use a particular premises at a particular place for starting his business. It is the choice and freedom of the landlord. In this view of the matter, I conclude that the learned District Judge-1 was right in accepting the case of the plaintiffs that their requirement is reasonable and *bona fide*.

13] The next important issue that needs careful consideration is the comparative hardship to the parties in case of the decree or in case of refusal of the decree. It is to be noted that the mandate of Section 16(2) of the Maharashtra Rent Control Act is very specific and clear. It provides that no decree for eviction shall be passed on the ground of requirement, 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. On plain reading of the provisions of sub-section (2), it is apparent that even if the alternative premises are available with the tenant as well as with the landlord, the Court has to record a finding that no hardship would be caused by passing the decree than by refusing to

pass it. It is to be noted that the availability of other reasonable accommodation with the landlord or with the tenant is the most important component of sub-section (2) of Section 16 of the Maharashtra Rent Control Act. The availability of reasonable accommodation for the landlord or for the tenant needs proper consideration while deciding the issue of hardship. If the Court is satisfied that greater hardship would be caused by passing the decree than by refusing to pass it, the Court, as per sub-section (2), shall not pass a decree for eviction.

14] On this important aspect, the parties have blamed each other for suppression of material facts vis-a-vis the availability of other reasonable accommodation with them. It is submitted that the plaintiffs suppressed the availability of residential premises at Mahavir Ward, Hinganghat, admeasuring about 600 sq. ft. It is the case of the plaintiffs that the defendant has suppressed the availability of business premises at Neharu Ward, Hinganghat. On careful consideration of the evidence on record, I am satisfied that plaintiffs have not suppressed any fact from the Court and as such, on this point they are on better footing.

15] It is not the case of the defendant that the premises of

the plaintiffs at Mahavir Ward is business premises. The plaintiffs have admitted that it is a residential premises. In my opinion, therefore, the contention of the defendant that the plaintiffs have suppressed the existence of this premises would be of no significance, inasmuch as it is the residential premises. As far as the defendant is concerned, in his cross-examination, he has categorically admitted the availability of other reasonable premises with him for starting his business. In his cross-examination, he has admitted the map of his building at Exh.136. He has stated that the construction of the ground plus one-storey house was made as per the plan at Exh.136. He has admitted that the residential area on the first floor admeasures about 1000 sq. ft. He has stated that, on the ground floor, the construction is 1000 sq. ft. He has admitted that, in the sanctioned plan, the ground floor has been shown as a shop for doing the screen printing, studio, and starting office. In my view, this admission of the defendant is very material to address the issue of hardship.

16] The defendant has constructed the ground plus one-storey house. On the ground floor, there is a shop admeasuring 1000 sq. ft. He has admitted that the plot is admeasuring about 1500 sq. ft. The defendant did not disclose this fact initially. This

evidence has surfaced during the course of the evidence. The defendant was constrained to admit this document. The learned Civil Judge (Senior Division) did not accept this document on the ground that it was not proved in accordance with law. The learned District Judge-1 has corrected this finding. It is to be noted that the admitted fact need not be proved. The defendant admitted the availability of the shop premises with him on the ground floor of his building. It is contended that this premises may not be suitable in all respects. In my view, on this count, there is no substance in the submission. It has come on record in the cross-examination of the defendant that his newly constructed house is in a prime business locality. The defendant, as can be seen from this admission, has constructed a shop on the ground floor admeasuring about 1000 sq. ft. The suit premises is admeasuring about 600 sq. ft. Compared to the suit premises, the newly constructed shop in the building by the defendant would be more suitable to him for shifting and expanding his business. Compared to the plaintiffs, the defendant on this point is on better footing. He has reasonable alternative premises with him. In my opinion, therefore, the learned District Judge-1 was right in holding that no hardship at all would be caused to the defendant in case the decree for eviction is passed.

17] In view of this, I am satisfied that the learned District Judge-1 has not committed any illegality or perversity while accepting the contention of the plaintiffs. The findings are based on proper appreciation of the evidence. The judgment and decree does not suffer from any mistake or illegality. As such, I do not see any substance in the revision. The revision application is accordingly **dismissed**.

(G. A. SANAP, J.)

Vijay