



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

CIVIL REVISION APPLICATION NO. 140 OF 2018

APPLICANT : Anilkumar S/o. Bhaskarrao Walokar,
 (Ori. Plaintiff) Aged about Years, Occ. Business,
 R/o. Sunil Niwas, Chitar Oli,
 Nagpur.

//VERSUS//

NON-APPLICANTS : 1. Rajkumar S/o. Holaram Gurnani,
 (Ori. Defendants) Aged about 62 Years, Occ. Business.

2. Kishor S/o. Holaram Gurnani, Aged
 about 45 Years,
 Respondent Nos.1 and 2 having their
 place of business in the shop block
 on the ground floor of the building
 bearing Municipal Corporation
 House No.307, NIT Plot No.71,
 Ward No.30, Bhavsar Chowk,
 Central Avenue Road, Nagpur.

Mr. R.M. Sharma, Advocate for the Applicant.
 Mr. G.I. Dipwani, Advocate for the Non-applicants.

CORAM : G. A. SANAP, J.
RESERVED ON : 25th OCTOBER, 2024.
PRONOUNCED ON : 18th FEBRUARY, 2025.

JUDGMENT

. In this revision application, challenge is to the

judgment and order dated 25th September, 2018, passed by the learned District Judge-3, Nagpur, whereby the learned Judge dismissed the appeal filed by the applicant/original plaintiff against the judgment and decree passed by the learned 2nd Additional Judge, Small Causes Court, Nagpur, in Regular Civil Suit No.166/2012 dated 18th July, 2017. The learned Judge of the Small Causes Court, Nagpur, *vide* order dated 18th July, 2017, had dismissed the suit filed by the applicant/plaintiff for possession of the tenanted premises in possession of the non-applicants/defendants on the ground of reasonable and *bona fide* requirement.

02] The facts are as follows:

In this judgment the parties shall be referred by their nomenclature in the plaint. The applicant shall be referred as the plaintiff, and the non-applicants shall be referred as the defendants. The premises, admeasuring about 114.4 sq. ft., situated on the ground floor of the Municipal Corporation House No.307, NIT Plot No.71, Ward No.30, Bhavsar Chowk, Central Avenue Road, Nagpur, shall hereinafter be referred to as the “suit premises”. The defendants were inducted in the suit premises way back in 1990 as a tenant. The suit premises is a shop. Initially, the defendants were doing the business of selling school bags, and now they are doing

the oil business from the suit premises. It is the case of the plaintiff that the suit premises consist of ground plus one floor. On the first floor of the suit premises, there is a lodge known as Vishranti having nine rooms. The said lodge is run by the sister-in-law of the plaintiff. The plaintiff and other members of the family, including the sister-in-law, are residing jointly. It is stated that, in order to complement to the business of the lodge, the plaintiff wants to start the business of the restaurant on the ground floor. On the ground floor, one shop in the line of the suit premises facing the road is in possession of the plaintiff. The plaintiff needs 1000 to 1100 sq. ft. area for starting the restaurant. The plaintiff has no premises in his possession to start his restaurant business. The suit premises are required reasonably and *bona fide* by the plaintiff for starting his restaurant business. The defendants were requested by the plaintiff to vacate the suit premises. The defendants did not pay any heed. It is submitted that the plaintiff would suffer greater hardship, if a decree is not passed in his favour. On the other hand, it is contended that the defendants would not suffer any hardship, because the commercial premises are easily available in the locality. On these averments, the plaintiff prayed for a decree.

03] The defendants resisted the claim. The defendants

have admitted that they are the tenant of the suit premises. However, the defendants have denied the claim of the plaintiff with regard to the requirement of the premises for starting the restaurant business. It is contended that the plaintiff is having sufficient premises in the suit premises as well as in other buildings in the vicinity owned by the family. The plaintiff can very-well start his business there. The requirement is not reasonable and *bona fide*. The defendants have no alternative premises for doing their business. Their livelihood depends upon the income from the business carried on from the suit premises. The plaintiff is financially well off. He is in the business of jewellery. If the decree for eviction is passed, then they would come on the street. They have no alternative premises. They would suffer greater hardship in case a decree for possession is passed.

04] The parties adduced the evidence to support their rival contentions. The learned 2nd Additional Judge, Small Causes Court, Nagpur, dismissed the suit holding that the plaintiff has failed to prove his requirement of the premises. The plaintiff filed the appeal against this judgment and decree. The learned District Judge-3, Nagpur, has recorded a finding on the issue of reasonable and *bona fide* requirement in favour of the plaintiff. However, the

learned District Judge on the point of hardship has recorded a finding that the defendants/tenants would suffer greater hardship in case a decree for possession is passed. The learned District Judge, by holding that the decree for possession would cause greater hardship to the defendants/tenants, dismissed the suit. The plaintiff has challenged the finding recorded by the learned District Judge on the point of hardship by filing this revision application. The defendants have not filed counterclaim to challenge the finding on the point of reasonable and *bona fide* requirement recorded against them.

05] I have heard Mr. R.M. Sharma, learned advocate for the applicant/plaintiff and Mr. G.I. Dipwani, learned advocate for the non-applicants/defendants. Perused the record and proceedings.

06] Learned advocate for the plaintiff submitted that the learned District Judge has failed to properly appreciate the evidence adduced by the plaintiff on the point of hardship. Learned advocate submitted that defendant No.1 in his cross-examination has categorically admitted that from 24th April, 2012, he has not searched the alternative accommodation. Learned

advocate submitted that the learned District Judge has only taken into consideration further part of the cross-examination where the suggestion put to defendant No.1 with regard to the efforts to search for alternative accommodation was denied. Learned advocate submitted that the learned District Judge has recorded the finding on the issue of hardship against the plaintiff by ignoring this categorical admission. It is submitted that the finding recorded by the learned District Judge, ignoring the admission, is perverse and it needs to be corrected. Learned advocate submitted that the tenant has to plead and prove that, after the filing of the suit for recovery of possession on the ground of requirement, he has made efforts to find out the alternative premises. Learned advocate submitted that this finding needs to be corrected. Learned advocate further submitted that other observations made by the learned District Judge with regard to the affluent status and financial position of the plaintiff, could not be taken into consideration while deciding the hardship. Similarly, the other source of livelihood through the jewellery shop could not have been taken into consideration by the learned Judge, while recording the finding on the issue of hardship against the plaintiff. Learned advocate, in order to seek support to his submission, has relied upon the following decisions:

1. *Shamshad Ahmad & Ors. Vs. Tilak Raj Bajaj (deceased) thr. L.Rs. & Ors. [(2008) 9 SCC 1].*
2. *Gaur Chandra Basu and Anr. Vs. Ruchira Ashok Sonde & Anr. [(2002) SCC OnLine Bom 808].*
3. *Bhimanagouda Basanagouda Patil Vs. Mohd. Gudusaheb [(2003) 3 SCC 101].*

07] Learned advocate for the defendants submitted submitted that the income from the suit premises is the only source of livelihood of the defendants. If the decree for eviction is passed, then they would come on the street. The defendants have established the goodwill of their business carried on from the suit premises. It is submitted that the defendants have pleaded as well as proved that they are unable to find out the alternative premises in the locality. It is submitted that the learned Judge has properly appreciated the evidence and attending circumstances. It is further submitted that, if the decree for eviction is passed against the defendants, then they would suffer greater hardship. Learned advocate submitted that the admission sought to be capitalised by the plaintiff was given under the misconception. His evidence in totality has to be considered. It is submitted that the finding recorded by the learned Judge on the point of hardship does not warrant interference in the revisional jurisdiction.

08] In order to address the issue of hardship, sub-section (2) of Section 16 of the Maharashtra Rent Control Act, 1999 needs consideration. Sub-section 2 of Section 16 mandates 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. In short, it states that if the decree results in greater hardship than by refusing to pass it, then the decree on the ground of requirement shall not be passed. The availability of other reasonable accommodation is the most important factor while deciding the comparative hardship.

09] It is submitted that defendant No.1, after filing of the suit, did not search for the alternative accommodation. Learned advocate for the plaintiff took me through the evidence as well as the finding recorded by the learned Judge. The plaintiff has stated that he has no alternative accommodation for starting the restaurant business, and therefore the premises are required by him. The finding recorded by the learned District Judge on the point of his requirement of the premises in his favour has attained finality.

The defendants/tenants have denied the claim. It is contended by the defendants that they have no alternative premises and therefore they would suffer greater hardship, if the decree for eviction is passed. Learned advocate took me through the cross-examination of defendant No.1 and pointed out that he has admitted that he had not searched for the alternative accommodation since 24th April, 2012. The suit was filed in 2012. It is seen from further part of the cross-examination that defendant No.1 has denied that he did not make attempts to find out the reasonable alternative accommodation. The learned District Judge seems to have overlooked this vital and important admission. The learned Judge has given undue importance to the other part of his cross-examination. He was asked in his cross-examination whether he had searched for alternative accommodation. He answered the said question in the affirmative and denied the suggestion that he is deposing falsely on that count. It is to be noted that, in view of this candid admission, it was not necessary to ask any further question of defendant No.1 in the cross-examination. However, the advocate for the plaintiff took the risk. This seems to be a mistake on the part of the advocate. However, on account of this mistake, the vital admission given by defendant No.1 that he did not search for the alternative accommodation from 24th April, 2012, is a very clear

and unambiguous admission. It can be made use of against the defendants. The learned Judge, as can be seen from the analysis of the evidence, has completely missed this part of the evidence. The finding on this issue has been recorded, ignoring this vital admission. In my view, this is contrary to the record. This finding is required to be corrected.

10] The Hon'ble Apex Court in the case of ***Shamshad Ahmad & Ors.*** (supra) has held as follows:

“50. Regarding comparative hardship, nothing has been stated by the tenant as to whether any attempt has been made by him to get alternative accommodation and he failed to get such accommodation. In the circumstances, in our opinion, the appellate authority was right in observing that there was no evidence to show that no shop was available to the tenant. It is quite possible, as noted by the appellate authority, that the tenant might have to pay more rent. But that would not preclude the landlords from getting possession of the suit shop once they had proved genuine need of the property.”

11] The Co-ordinate Bench of the Bombay High Court at Principal Seat in the case of ***Gaur Chandra Basu & Anr.*** (supra) has held as follows:

“12. From the evidence it is obvious that no positive evidence has been adduced by the defendants that getting alternative premises in the same locality or the same city was impossible. If that be so, then applying the principle enunciated by the Apex

Court in (1979) 1 SCC 273 : A.I.R. 1979 S.C. 272 in the case of (Ms. Bega Begum v. Abdul Ahad Khan (dead) by L.Rs.), the Court will have to answer the issue of comparative hardship against the petitioners-tenants and in favour of the respondent-plaintiff landlady.”

12] In my view, the above-stated settled legal position seems to have been glossed over by the learned Judge. The admission given by defendant No.1, as stated-above, is sufficient to crystallize this issue. The tenant has to plead and prove that despite efforts, the alternative premises are not available. Perusal of the evidence would show that defendant No.1 in his examination-in-chief has stated that he has tried his level best to search the alternative accommodation, but he could not get the same. The defendant No.1 was required to adduce the sufficient evidence to elaborate this aspect. A bald statement of this kind would not be sufficient to accept the contention. The defendant No.1 could have provided the particulars as to the place where he searched for the alternative premises. He was required to provide the details of the locality, the rent, etc. His evidence is silent. In his cross-examination, he has given admission contrary to what was stated in the examination-in-chief. The admission cannot be discarded. The admission is the best evidence. In order to wriggle out of the admission, it must be proved that it was given on account of some

misconception or confusion. It could have been explained by conducting re-examination. In my view, therefore, the settled legal position is against the defendants. The defendant No.1 has failed to prove that he made search of the alternative premises, and he could not get the same.

13] The learned Judge, while recording the finding on the issue of hardship against the plaintiff, has observed that the plaintiff is having a jewellery shop, and starting the business of restaurant from the suit premises would help him to earn more. It is observed that for earning his bread and butter, the business of the restaurant is not must. His survival does not depend on the said business. The learned Judge has observed that additional income from the restaurant business would bring luxury to the plaintiff, whereas the defendants/tenants would struggle for earning their bread and butter from the new premises. It is also observed that, if the defendants are required to vacate the suit premises, then they would lose their goodwill and may not get a lucrative business at another premises in a different area. In my view, these observations are contrary to the settled legal principles.

14] The Hon'ble Apex Court in the case ***Bhimanagouda Basanagouda Patil*** (supra), has held that the finding of comparative

hardship cannot be recorded in favour of the tenant only on the basis of the affluence of the parties. If this is the correct approach, then an affluent landlord can never get possession of his premises even if he proves all his *bona fide* needs.

15] In my view, in the backdrop of this settled legal position, the observations made by the learned Judge on this point cannot be sustained. The learned Judge has failed to properly appreciate this aspect. In view of this, I conclude that the finding recorded by the learned Judge on the point of comparative hardship is required to be set aside. As such, the revision application deserves to be allowed. Accordingly, the suit filed by the plaintiff deserves to be decreed. Hence, the following order:

ORDER

- i] The revision application is **allowed**.
- ii] The suit is decreed with costs throughout.
- iii] The defendants shall deliver the vacant and peaceful possession of the suit premises to the plaintiff.
- iv] The tenancy of the defendants has been determined/terminated by the decree of this Court. If the defendants fail to vacate the premises, then they shall pay the

mesne profits from the date of this order.

v] The revision application stands disposed of in the aforesaid terms.

(G. A. SANAP, J.)

Vijay