Swapnil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 974 OF 2010

Royal Vasudhara Co-operative
Housing Society Ltd.
Having its registered office at
Dr. Charat Singh Colony,
Andheri (East), Mumbai 400 093. …Applicant

Vs.

Rambahadur Barodi.
Adult Indian Inhabitant of Bombay
Residing at Rear portion of Garage
Royal Vasundhara Co-operative
Housing Society Ltd. Compound,
Dr. Charat Singh Colony,
Andheri (East), Mumbai 400 093. …Respondent

Mr. Shreeganesh Khaire a/w. Ms. Gayatri Shenui for the applicant.

CORAM : GAURI GODSE, J.

DATE : 17th AUGUST 2026

JUDGMENT :

1. This civil revision application is filed by the original plaintiff to challenge the judgment and decree passed by the

appellate bench of the Small Causes Court at Mumbai allowing the respondent's appeal and setting aside the trial court's decree in favour of the plaintiff. The trial court had decreed the suit on the grounds of default, bonafide requirement of the plaintiff, and nuisance and annoyance created by the respondent. In an appeal preferred by the respondent, the said decree is reversed.

2. The respondent was employed by the plaintiff society and was permitted to reside in the society premises in lieu of his service. The respondent has accordingly been occupying the rear portion of the garage as a residence since 1977. The employment was terminated w.e.f. 1st June 1984. The respondent filed a complaint in the Labour Court, and his prayer for reinstatement with full back wages was dismissed. The plaintiff was directed by the Labour Court to make payment towards the salary for one year. The respondent filed a declaratory suit for seeking a declaration of his tenancy. The plaintiff issued a notice dated 8th September 1992 calling upon the respondent to pay arrears of rent at the rate of Rs. 100/- per month from 1st June 1984, thereby terminating the tenancy. The respondent issued a reply dated

17th September 1992, disputing the rent amount claimed at Rs. 100/- per month. He contended that he was regularly paying the rent of Rs. 25/- per month. However, the receipts were not issued. He thus contended that he had not committed any default in the payment of rent. The reply was responded to by filing a rejoinder notice denying the allegations made by the tenant. The applicant thereafter filed the suit for eviction on the ground of default, *bona fide* requirement and nuisance.

3. It is the plaintiff's case that the defendant failed to make payment of the arrears. Hence, the tenancy was terminated, and the plaintiff was entitled to a decree for eviction on the ground of default, *bona fide* requirement and nuisance. The plaintiff contended that, to conduct the society meetings and store, the plaintiff needed premises occupied by the tenant. The allegation regarding nuisance created by the respondent's family members was also specifically pleaded.

4. The defendant filed his written statement and denied the suit claim. He contended that he was working as a part-time water pump operator and after his services were

terminated, he was regularly paying the rent. The orders passed by the labour court were produced by the plaintiff in support of the termination of employment and to seek rent from 1st June 1984. During the pendency of the eviction suit, the respondent withdrew his suit for declaration of his tenancy. On the ground of *bona fide* requirement, the plaintiff produced documentary evidence and examined the chairman and one member of the society to support the grounds of *bona fide* requirement and nuisance created by the respondent.

5. The defendant also examined himself and relied upon the orders passed by the labour court. There is no dispute that the defendant failed to comply with the demand notice. Even after the issues were framed, the defendant failed to deposit the arrears as demanded, along with interest and costs. The trial court had passed an order on 13th December 1993 directing the defendant to deposit Rs. 60/- per month from January 1994 onwards on or before the 10th day of each month. Since the defendant failed to comply with the demand notice, the trial court held him as a defaulter and passed a decree of eviction on the ground of default. The trial court

also accepted the plaintiff's allegations of nuisance created by the respondent. Based on the evidence on record, the *bona fide* requirement of the society and hardship were also found in favour of the plaintiff. Thus, the trial court passed a decree on the ground of default, *bona fide* requirement and nuisance.

6. The appeal court has reversed the findings on the ground of default, holding that after the termination of the employment, no notice was issued to the defendant; thus, the plaintiff was not entitled to demand the rent of Rs. 100/- per month from 1st June 1984. As far as the issue of bona fide requirement is concerned, the appellate court held that the society's witnesses admitted that the terrace premises were available for holding meetings. Hence, the *bona fide* requirement claimed by the society was not genuine. The issue of nuisance was also reversed by the appellate court.

7. Learned counsel for the applicant submits that the receipt of the demand notice is proved as the defendant had replied to the same and disputed the rate of rent. However, the respondent neither filed any application for fixation of the standard rent nor complied with the demand notice. The

defendant also failed to make payment of the entire arrears of rent as demanded, along with interest, on the first day of the hearing of the suit. He further submits that the trial court's findings on the plaintiff's *bona fide* requirement are erroneously reversed by the appellate court by holding that since the terrace premises are available, the requirement is not bona fide. He submits that substantial evidence was led to show that the plaintiff required the suit premises to keep the society's records and furniture, and that they were not restricted only to holding meetings. He submits that even on the ground of nuisance, the appellate court has erroneously disbelieved the contentions raised on behalf of the society. The evidence on record clearly indicated the nuisance created by the respondent and his family, as they were occupying a part of the garage premises, causing a nuisance to the society.

8. Learned counsel for the applicant submits that sufficient evidence was produced to show the obstruction and nuisance created by the respondent's family members during the meetings of the society conducted in the portion of the garage which was in possession of the society. He,

therefore, submits that even on the ground of nuisance, the plaintiff is entitled to a decree of eviction. Learned counsel for the applicant submits that the appeal court has erred in reversing the finding of the trial court where the clear case is made out on the ground of default, bona fide requirement and nuisance. He submits that in the absence of compliance as required under sub-section (3) of Section 12 of the Bombay Rents, Hotel and Lodging Rates Control Act, 1947 ("Rent Act"), no protection is available to the defendant.

9. Despite service, none appears for the defendant.

10. I have perused the application papers and the copies of the additional documents tendered by the learned counsel for the applicant. The documents are part of the record produced in the trial court. The defendant responded to the demand notice only on the ground that the monthly rent was Rs. 25/- per month, not Rs. 100/- per month. The defendant has failed to file any application for standard rent. Hence, the defendant was liable to pay the amount demanded to avoid any decree of eviction. The defendant neither applied for fixation of standard rent nor complied with the demand notice by depositing the amount of arrears of rent as demanded,

along with 9% interest, on the first day of the hearing of the suit. Despite the trial court permitting the defendant to pay Rs. 60/- per month during the pendency of the suit, the defendant did not fully comply with the said order. The trial court has therefore rightly held that, in view of non-compliance of the requirement as contemplated under sub-section (3) of Section 12 of the Rent Act, the plaintiff is entitled to a decree for eviction on the ground of default.

11. It is a well-established legal principle that, to avoid a decree for eviction on the ground of default, the tenant is required to pay the entire demanded arrears along with interest on the first date of hearing of the suit. In the present case, the defendant admittedly has not complied. The findings recorded by the appellate court for reversing the decree of eviction on the ground of default is not sustainable. In view of the admission of the defendant that after termination of the employment he was occupying the suit premises as a tenant, he was under an obligation to pay rent. The reasons recorded by the appellate court that the plaintiff was required to intimate the defendant regarding the rent at the rate of Rs. 100/- per month is no ground to reverse the

trial court's decree.

12. The defendant has claimed that the rate of rent was Rs. 25/- per month. Hence, either the defendant was required to file an application for fixation of a standard rent and make payment as per the orders passed in a standard rent application, or to deposit the entire demanded amount with interest on or before the first day of the hearing to avoid the decree of eviction. None of the conditions is fulfilled. The appellate court failed to consider the well-established legal principles governing the grant of a decree of eviction on the ground of default. The reasons recorded by the appellate court are not in accordance with the well-settled legal principles.

13. So far as the ground of *bona fide* requirement is concerned, the evidence produced by the plaintiff proves the requirement of the plaintiff for *bona fide* use of suit premises. Only on the ground of stray admission that the meetings are conducted in the terrace area, the same cannot be considered to disbelieve the plaintiff's pleadings supported by evidence that the suit premises were bona fide required by the society for keeping records and furniture of the society

and holding meetings.

14. The defendant has failed to lead any evidence to prove any hardship. Hence, in the absence of any pleadings supported by any evidence that the defendant would suffer any hardship, the appellate court has erred in not considering the issue of *bona fide* requirement and hardship in favour of the plaintiff. The reasons recorded by the appellate court regarding the appreciation of evidence on availability of the terrace area is not sustainable when there is no dispute that the society required the premises for its *bona fide* use. To avoid a decree on the ground of *bona fide* requirement, if the defendant seeks to claim protection on the ground of hardship, it is the obligation of the defendant to plead and prove that, despite making an attempt, he was unable to secure any other premises. In the absence of any such pleadings and supporting evidence, the trial court's findings on *bona fide* requirement need to be confirmed. The appeal court's findings on disbelieving the ground of *bona fide* requirement are not in accordance with the pleadings and evidence on record.

15. So far as the ground of nuisance is concerned, in the

absence of any satisfactory evidence, the ground of nuisance disbelieved by the appellate court would not warrant any interference. However, in view of the admitted facts and the available evidence, as discussed in the above paragraphs, the plaintiff is entitled to a decree of eviction on the ground of default and *bona fide* requirement.

16. For the reasons recorded above, the civil revision application is allowed by passing the following order :

I. The judgment and decree dated 26th February 2010, passed by the appellate bench of the Small Causes Court, Mumbai, in Appeal No. 18 of 2008, is quashed and set aside.

II. Appeal No. 18 of 2008 is dismissed.

III. Judgment and decree dated 26th October 2007 passed by the learned judge of the Small Causes Court, Mumbai in R.A.E. & R. Suit No. 412/1234 of 1992 is confirmed on the ground of default and *bona fide* requirement.

IV. The defendant is accordingly ordered to vacate and hand over the vacant and peaceful possession of the suit premises to the plaintiff within two months from today.

V. The defendant shall pay an amount of arrears of rent in

terms of prayer clause ‘b’ of the suit within two months from today.

VI. Decree be drawn accordingly.

17. The civil revision application is allowed in the aforesaid terms.

18. Interim/Civil applications, if any, are disposed of as infructuous.

[GAURI GODSE, J.]