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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 292 OF 2007

Shri. Ramughraha Ramcharita Tiwari
(since deceased through legal heirs)
1A. Santoshi Harinam Tripathi
1B. Mahendra Ramkisan Tiwari
1C. Mahesh Ramkisan Tiwari
1D. Dinesh Ramkisan Tiwari

...Applicants
Org. Defendant

Versus

Alaknanda Gopalkrishna Badale
(since deceased through legal representatives)
1A. Gopalkrish Surajmal Badale
1B. Pradip Gopalkrishna Badale
(since deceased through legal heirs)
1BA. Sarita Pradip Badale
1BB. Radhika Pradip Badale
1BC. Devika Pradip Badale
1BD. Karik Pradip Badale
(1BA is the guardian for Respondent Nos.1BB to 1BD.)
1C. Dinesh Gopalkrishna Badal
1D. Umesh Gopalkrishna Badale
1E. Manisha Vinod Asawa
1F. Sonali Rupesh Bhakkat
1G. Rupali Gopalkrishna Badale
1H. Vaishali Gopalkrishna Badale
2. Manojkumar Gopalkrishna Badale
3. Sandipkumar Gopalkrishna Badale

...Respondents
Org. Plaintiffs

Mr. Balkrishna D. Joshi for the Applicants.
Mr. Kamlesh Y. Mali for Respondents

CORAM : M.M. SATHAYE, J.

RESERVED ON : 26th SEPTEMBER 2025

PRONOUNCED ON : 1st DECEMBER, 2025

JUDGMENT :

1. By this application filed under Section 115 of Civil Procedure Code, 1908 ('CPC', for short) the purported legal heirs/representatives of original Defendant/Tenant are challenging the impugned Judgment and Decree dated 27.11.2006 passed in Civil Appeal No.70 of 1993 by III Ad-hoc District Judge-I, Malegaon, by which the Judgment and Decree passed in Regular Civil Suit No.67 of 1986 dated 31.03.1993 by Joint Civil Judge, Junior Division, Malegaon, is set aside. By the impugned Decree, the said suit is decreed directing the original Defendant/Tenant to vacate the suit premises.

2. Few facts necessary for disposal of this revision application, are as under. Original Plaintiffs filed the said suit under provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Bombay Rent Act', for short), for recovery of possession and arrears of rent and for *mesne profit* from the original Defendant (Ramughraha Ramcharita Tiwari) on the grounds of personal and *bona fide* requirement, erection of permanent structure without permission of the landlord and nuisance. The Plaintiffs contended that the Defendant is a monthly tenant @ Rs.155/- per month. The original Defendant filed written statement contending *inter alia* that he has not made any permanent construction nor causing any nuisance. The learned Trial Judge after appreciating the evidence on record, dismissed the suit and fixed standard rent @ Rs.155/- p.m.,

directing the Defendant to deposit rent up to date. The Plaintiffs filed the aforesaid appeal challenging the dismissal of the suit. During pendency of the appeal, Plaintiff No.1 expired and her legal heirs are brought on record. The Appeal Court, initially dismissed the appeal by Judgment and Order dated 19.07.2002. The Plaintiffs filed Writ Petition No.858 of 2004, which was allowed by this Court under Order dated 06.07.2006, remanding the matter to the Appeal Court for fresh consideration only on the issue of *bona fide* requirement. The appeal was reconsidered and by the impugned Judgment and Decree, eviction is ordered. In these circumstances, the original Defendant initially filed writ petition. However, it was thereafter converted into present Civil Revision Application. Ad-interim stay to eviction was granted on 08.06.2007 which was confirmed on 20.06.2007, when the matter was admitted.

3. During pendency of the revision application in this Court, original Defendant expired and his purported legal heirs/representatives are brought on record. During pendency of the revision, one of the legal heirs of original landlord also expired and his further legal heirs are brought on record.

SUBMISSIONS

4. Learned counsel for the Revision-Applicants, Mr. Joshi submitted as under. That after the remand of appeal, no fresh evidence is led. That the Appeal Court on re-appreciation of the same evidence has decreed the suit. He submitted that there is no evidence about partition among the family members of the landlord and

apparently due to confusion about whether the building is three storey or four storey, certain admissions given by the landlord were not properly considered. That in paragraph no.38 of the Appeal Court Judgment, such confusion is apparent. That earlier, both the Courts were in favour of the Tenant. Relying heavily on an additional affidavit filed by Revision Application No.1(b) (Mahendra Ramkisan Tiwari), it is submitted that there are many subsequent events in the form of construction of other property, receipts of other rooms from other Tenants in the suit building and construction of additional floors in the suit building. It is contended that therefore landlord does not require the suit premises *bona fide*. That landlord has suppressed various other properties available and therefore inference is required in the impugned order. He relied upon the Judgment of **Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff & Ors. [2004(Supp.) Bom.C.R. 333]** in support of his case, to contend that it is landlord's duty to disclose availability of other premises that can be utilized for the requirement pleaded, and only then, landlord will be able to invoke the said ground. He also relied upon **P. V. Papanna and Ors. Vs. K. Padmanabhaiah (1994) 2 SCC 316** for subsequent developments.

5. On the other hand, Mr. Mali learned counsel appearing for the Respondents, at the outset raised serious issue about the locus of present Revision Applicants claiming to be legal heirs. He pointed out that the name of original Defendant/Tenant was Ramughraha Ramcharita Tiwari. However, the present revision was filed by his Power of Attorney holder by name Ramkisan Chandrika Tiwari. He

submitted that Ramughraha Ramcharita Tiwari & Ramkisan Chandrika Tiwari are different persons, though their surnames are same. He submitted that the present alleged legal heirs are legal heirs of Power of Attorney and not of original Tenant. Relying on admission given by original Defendant in cross-examination, it is pointed out that the original Defendant Ramughraha has admitted that he has only one daughter who is married and resident of Allahabad. He submitted that in such circumstances, the decree of eviction passed by the Appeal Court on the ground of *bona fide* requirement, cannot be challenged and landlord's requirement cannot be questioned by persons who are not legal heirs of original Defendant but legal heirs of his Power of Attorney holder. On merits, he submitted that the additional affidavit filed on behalf of the Applicant has been replied by filing affidavit-in-rejoinder dated 22.09.2023. He submitted that the attempt of present Applicants to point out so called additional premises available with the landlord, is nothing but an attempt to prolong the litigation. He submitted that the suit premises has been kept in locked condition and it is not being used. Certain photographs produced by the Applicants along with additional affidavit are denied. It is contended that the Applicants are misleading the Court. He submitted that there is no suppression about available premises. He submitted that when the Appeal Court had considered the requirement, there were about 11 members in the family of the landlord. However, in the long period of time from 1986 when the suit was filed and today, the family members have increased to 25. He submitted that three members of landlord family are handicapped who cannot use stairs and as such the landlords are in desperate need

of suit premises which is situated on the ground floor. He further submitted that daughter of Respondent No.2 has become advocate and she also needs suit premises. He relied upon following Judgments in support of his case.

- i. G. Kaushalya Devi (Smt) Vs. Ghanshyamdas [(2000) 2 SCC 1].
- ii. Balwant P. Doshi Vs. Shantaben Dhirajlal Shah and Anr. [2002(4) Mh.L.J. 473].
- iii. Vasant Sadashiv Joshi and Ors. Vs. Yeshwant Shankar Barve, through his legal heirs and Ors. [(2020) 1 Bom CR 763].
- iv. M/s. Ghatge Patil Transport Limited Vs. Shridhar Tukaram Khade (since deceased through His L.Rs.) decided on 25.01.2024 in CRA/574/2022.
- v. Rajendrakumar Sharandas Sharma Vs. Shrikrushna Babanrao Guhe (dead) through Legal heirs Asha d/o. Shrikrushna Guhe and Anr. [2010(5) Mh.L.J. 150].
- vi. Subramania Mudaliar Vs. Kolapur Traders [(1981) 4 SCC 511].
- vii. Mohanlal s/o. Chandulal Agrawal Vs. Navalkishor s/o. Radheshyam Kulwal [2016(1) Mh.L.J. 735].

REASONS AND CONCLUSIONS

6. I have carefully considered the submissions and perused the record with the assistance of learned counsel for the parties.

7. At the outset, it is important to note that the jurisdiction of this Court under Section 115 of CPC is limited and this Court is not expected to re-appreciate the evidence and substitute its own finding in the place of finding arrived at by the Appeal Court. It is true that in the present case, the Trial Court had dismissed the suit. However, the Appeal Court on re-appreciation of the evidence has decreed the

same.

8. In light of the above, let us now consider the facts of the present case. Admittedly, original Tenant was Ramughraha Ramcharita Tiwari who had entered into witness box and was cross-examined. In his cross-examination, original Tenant/Defendant admitted that she has one daughter who is married and staying at Allahabad. This admission clearly indicates that original Defendant Tenant's family member, known to the Court, is only the daughter who is residing at Allahabad being married daughter. Therefore, there is nothing on record to indicate that this daughter/family member of Tenant was conducting business or using the suit premises at the time of his death.

9. It is admitted position that present revision is filed by original Defendant/Tenant through his Power of Attorney by name Ramkisan Chandrika Tiwari. In affidavit-in-reply filed by the Respondents/Plaintiffs, a clear stand is taken that present applicants (Mahendra, Mahesh & Dinesh) are not legal heirs of original Defendant and they are false legal heirs. It is also admitted position that legal heirs shown to have been brought on record are legal heirs of Ramkisan Tiwari and not Ramughraha Tiwari. They are two different persons. Interestingly a name of Mr. Santoshi Harinam Tripathi is also shown as legal heirs of Mr. Tiwari. Therefore, on the face of record, the present Revision Applicants are not legal heirs of original Defendant/Tenant. There is also no evidence before the Court worth a mention that these persons were conducting any business in the suit premises or occupying the same at the time of

death of original Defendant/Tenant. Therefore, on the face of record, the present Applicants have no locus to challenge the impugned Judgment and Decree. The present revision application is nothing but an effort by some third persons to hold on to a property.

10. Perusal of the plaint shows that the original Plaintiffs have pleaded that in a partition between Satyanarayan and Gopal being two brothers, the suit property has fallen to the share of branch of Gopal. It is pleaded that original Defendant was tenant since prior to partition and the suit premises is required for Plaintiffs for their own *bona fide* occupation. Plaintiff No.2 Manojkumar Gopalkrishna Badale has entered witness box and has supported the case made out in the plaint. In the evidence, it is stated that there are 10 persons in the family of the Plaintiffs and they are residing in 2 rooms, out of which one of the room is available as an Uncle's favour. Plaintiff No.2 has faced cross-examination. Even in the cross-examination he has stated that five brothers, four sisters and parents are staying in available place. During cross-examination, it has come on record that three other tenants are occupying the other premises available with the Plaintiffs. In the entire cross-examination, no suggestion is given to this witness that he has not disclosed premises available with him and therefore, the requirement is not *bona fide*.

11. The original Defendant examined himself. In the cross-examination, he admitted that he has a premises available with him at Shani Mandir building No.132/4. He has also admitted that he prepares food in the premises available near Shani Mandir and eats there. He has admitted that he has one daughter who is married and

she is residing at Allahabad. He shows ignorance towards number of members in the family of landlord. He admitted that the Plaintiff and his family brothers are staying with their uncle.

12. In a recent Judgment of **Sheshambal (dead) through LRs. v/s Chelur Corporation Chelur Building and Ors. (2010) 3 SCC 470**, the Hon'ble Supreme Court has observed in paragraph 17 that subsequent events having bearing on the right to seek relief can not be shut out from consideration and the Court is expected to 'examine the impact of such subsequent development' on the right to relief and if necessary, mould the relief suitably so that the same is tailored to the situation on the date of grant of relief. Hence, the settled position of law is that, in the proceedings under the Rent Act seeking eviction, subsequent events and its effect on the relief claimed are material consideration for the purpose of decision at Appellate stage. Development in the lives of landlord can not be expected to come to a standstill during pendency of eviction proceedings, especially in view of delay in legal system. There can be myriad of subsequent developments and situations. Therefore, to decide the impact of subsequent development, it is obvious that such effect has to be seen in the facts of each case and no straight jacket formula can be adopted. It is beyond dispute that unless the requirement is completely eclipsed / extinguished, suit for eviction can not be dismissed.

13. In view of the aforesaid oral evidence, it is clear that no such case of landlord suppressing available premises was made out before the Court. Today, during pendency of the civil revision application,

the purported legal representative of the tenant, who have no locus as already held above, are trying to impress upon the Court that various premises are available with the landlord. In such circumstances, it is not possible to re-appreciate the evidence in revisional jurisdiction, nor it is possible to interfere in the impugned Order on the basis of affidavit filed by son of the Power of Attorney holder.

14. The argument about property at City Survey No.139 about which property card is produced, is also devoid of merit, in as much as, the entry in the name of plaintiff is of February 1977, which is prior to filing of the suit and in respect of the said property it is brought on record by the landlord by filing affidavit-in-rejoinder dated 22.09.2023 that it is presently in possession of legal heirs of Pradip Badale one of the family members. As such, it cannot have material bearing on the issue of requirement pleaded. Reliance placed on certain plans of the suit building to indicate that new construction has taken place where landlord has premises, is not sufficient to conclude that the need pleaded by landlord is completely eclipsed.

15. Considering the same, there is no merit in the submissions of Revision Applicants that the landlord has suppressed any premises available with them. In that view of the matter, the judgment of **Tarachand Hassaram Shamdasani (supra)** will not help the Applicants, because in the present case, on facts it is found that there is no suppression by landlord. So far as other judgment relied upon by the Revision Applicants in the case **P.V. Papanna and Ors. (supra)** about subsequent developments, I have already discussed recent law

crystallizing the position as on today.

16. An attempt was made to argue that the Appeal Court has confused the situation of floors in the suit building. After going through the record and findings of the Appeal Court, I do not find any confusion.

17. Since the present Revision Applicants are found to have no locus to challenge the impugned Judgment and Decree, no further consideration on facts is necessary, at their instance.

18. Viewed in the light of what is observed above, if the impugned Judgment is perused, it is seen that the Appeal Court on appreciation of the evidence available before it, has come to the most probable finding. There is no perversity in the finding recorded by the Appeal Court. Hence no interference is required in the limited revisional jurisdiction of this Court. **Civil Revision Application is accordingly dismissed.** Rule is discharged. No order as to costs.

19. All the present Revision Applicants are directed to hand over vacant and peaceful possession of the suit premises to Respondents within a period of 6 weeks from today. The Eviction Order under impugned Judgment and Decree shall become executable immediately after expiry of 6 weeks.

20. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)