

(2018) 03 BOM CK 0110

In the Bombay High Court

Case No : Civil Revision Application No.27 of 2017

CHANDRASHEKHAR S. GADGIL AND OTHERS

APPELLANT

Vs

RAMESHPRASAD S/O MADHAVPRASAD SHUKLA AND
ANOTHER

RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 115

Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 — Section 8

Maharashtra Rent Control Act, 1999 — Section 15, 16(1)(g)

Transfer of Property Act, 1882 — Section 111(g), 112

Citation : (2018) 03 BOM CK 0110

Hon'ble Judges : MANISH PITALE, J

Bench : Single Bench

Advocate : P.A. Abhyankar, Masood Shareef, Aadil Mirza

Final Decision : Dismissed

Judgement

1. By this Civil Revision Application, the applicants have challenged the judgment and order dated 06th 12th 2016 passed by the Court of District

Judge¹², Nagpur, dismissing their appeal under the provisions of the Maharashtra Rent Control Act, 1999, whereby the decree passed by the Court

below in favour of the respondents has been confirmed.

2. The applicant no.1 entered into the possession of the suit property bearing plot no.59, Khare Town, North Ambazari Road, Dharampeth, Nagpur,

admeasuring 18755 sq.ft. together with structures thereon as per rent note dated 25th 06th 1972. This rent note was executed by the erstwhile landlord

from whom the respondents purchased the aforesaid suit property. The respondents purchased the suit property on 23rd 06th 1992. Thereafter, their

vendor issued a notice of attornment dated 19th 10th 1992, whereby the tenancy stood attorned in favour of the respondents.

3. In the year 1992, the respondents filed an application under Section 8 of the Central Provinces and Berar Letting of Houses and Rent Control

Order, 1949, against the applicants for fixation of fair rent. Thereafter, they issued notice on 25th 03rd 1998 to the applicants through their Advocate

calling upon the applicants to vacate the suit property within 30 days from the receipt of the notice and it was stated that in view of the allegations

made by the applicants in reply to the aforesaid notice dated 19th 10th 1992 issued by the respondents, their tenancy stood forfeited. Thereafter, on

30th 11th 2003, the respondents issued a notice to the applicants under Sections 15 and 16(1)(g) of the Maharashtra Rent Control Act, 1999 [for short,

'the Act of 1999'] stating that the applicants had been in arrears of rent for a period of 11 years and five months (137 months) and that they were

liable to pay an amount of Rs. 82,200/- towards such arrears of rent. The applicants were called upon to pay the said amount within a period of 90

days from the receipt of the said notice.

4. On 02nd 09th 2005, the respondents filed Regular Civil Suit No.569 of 2005 against the applicants for eviction and recovery of possession. In this suit,

the respondents claimed possession of the suit property on the ground of bona fide need. It was stated that two sons of the respondents had completed

their education and that one of them intended to open a showroom of two wheelers and the other who was already engaged in business intended to set

up a printing press and a manufacturing unit for pressing of boxes on the portion of the suit property. It was claimed that one of the sons who desired

to open a showroom required about 10,000 sq.ft. area of land and the other son who intended to expand his activity in the suit property required about

5000 sq.ft. area of land.

5. The applicants filed their written statement, in response to the said suit and denied the claim of the respondents. The Court proceeded to record the

evidence in the matter and took into consideration the respective stands of the parties.

6. On 29th 04th 2014, the trial Court held in favour of the respondents and decreed the suit. It was found that the respondents had been able to prove

their case of bona fide need and that the contentions raised on behalf of the

respondents resisting the claim of bona fide need were not supported by evidence and material on record and that even on the question of comparative hardship, the applicants had not been able to make a case in their favour. Aggrieved by the said judgment and order of the trial Court, the applicants filed appeal before the Court of District Judge at Nagpur. By the impugned judgment and order, the appellate Court has dismissed the appeal and confirmed the findings of the trial Court on the question of bona fide need. The appellate Court found that a ground raised by the respondents in their suit for eviction pertaining to demolition of certain construction did not require any interference, while another contention pertaining to the arrears of rent not even touched by the trial Court. Therefore, to that extent, on the question of arrears of rent under Section 15 of the Act of 1999, the appellate Court remanded the suit to the trial Court. A pursis has been filed in this Court informing that upon such remand, the respondents have given up their claim of arrears of rent under Section 15 of the Act of 1999 against the applicants. Therefore, the said issue does not fall for consideration.

6. Aggrieved by the impugned judgment and order passed by the appellate Court, the applicants have filed this Revision Application under Section 115 of the Code of Civil Procedure. Shri P.A. Abhyankar, learned Counsel appearing on behalf of the applicants has contended that the Courts below have committed a grave error in accepting the plea of bona fide need raised on behalf of the respondents. It is contended that the respondents had failed to place on record material and evidence to show that their sons required land to the extent of about 15000 sq.ft. for carrying on and expanding their business. It is pointed out that even as per the evidence of the witness appearing on behalf of the respondents, the need projected by the respondents could be satisfied in much less area of land as compared to what was claimed by them and that therefore, the issue of partial eviction arose in the matter which was not at all considered. In this context, the question of comparative hardship is also raised on behalf of the applicants stating that the respondents have deliberately suppressed the details of other properties owned by them in the suit and for such suppression the Courts below ought to have drawn an adverse inference and held against the respondents. Another aspect argued on behalf of the applicants was that once the respondents had issued notice dated 25-03-1998 regarding forfeiture of

tenancy, such forfeiture could have been waived only in terms of Section 112 of the Transfer of Property Act, 1882 and since there was no material on record to show that such waiver had taken place, the entire initiation of the proceeding under the provisions of the Act of 1999 was misplaced and the Courts below failed to appreciate the same. In support of his contentions the learned Counsel appearing on behalf of the applicants relied upon the judgments of the Hon'ble Supreme Court in the case of Shiv Sarup Gupta vs Dr Mahesh Chand Gupta, reported at (1999) 6 SCC 222 and this Hon'ble Court in Bismilla Bee Sk. Chand and another vs Mohd. Anwar Mohd. Akhtar, reported at 2010(2) Mh LJ 829, Tarachand Hassaram Shamsasani vs Durgashankar G. Shroff and others, reported at 2004 (Suppl.1) Bom.C.R. 333 and Vasant Mahadeo Gujar vs Baitulla Ismail Shaikh and another, reported at 2015(5) Bom. C.R. 243.

7. Per contra, Shri Masood Shareef, learned Counsel appearing on behalf of the non-applicants submitted that while examining the correctness of the judgments and orders of the Courts below, it was necessary to appreciate that this Court was exercising revisional jurisdiction in the present case. It was emphasized that revisional jurisdiction was distinct from the appellate jurisdiction and there was limited scope to exercise the same. The applicants had failed to demonstrate any perversity in the findings of the Courts below or any jurisdictional error for this Court to exercise its revisional jurisdiction. It was further pointed out that there were plethora of judgments of the Hon'ble Supreme Court and this Court laying down that the landlord was the best judge of his need and requirement and that the tenant was not entitled to dictate terms or to insist for partial eviction. It was further contended that there was no substance in the allegation of suppression of facts made against the respondents because the details regarding other properties were indeed before the Courts below and the witness appearing on behalf of the respondents had been cross examined in detail on that aspect and that therefore there was no prejudice suffered by the applicants due to the alleged suppression. It was further submitted that the other properties which the applicants claimed would have to be taken into consideration while bona fide need was examined, were thoroughly unsuitable for the need for which the suit for eviction in the present case was filed against the applicants. It was contended that neither the said properties were

available nor were they suitable for the need for which the eviction suit had been filed by the respondents. The learned Counsel appearing on behalf of the respondents relied upon the judgments of the Hon'ble Supreme Court in the case of Hindustan Petroleum Corporation Limited vs Dilbar Singh, reported at (2014) 9 SCC 78, Gulshera Khanam vs Aftab Ahmad, reported at (2016) 9 SCC 414, Ragavendra Kumar vs Firm Prem Machinery and Co., reported at (2000) 1 SCC 679 and the judgments of this Court in the case of Mohanlal s/o Chandulal Agrawal vs Navalkishor s/o Radheshyam Kulwal, reported at 2016(1) Mh.L.J. 735 and Rafiq Ahmed Quereshi s/o Bashir Ahmed vs Iqbal Khan s/o Hashmat Ali Khan and others, reported at 2012(1) Mh.L.J. 337.

8. Having heard the learned Counsel appearing on behalf of the parties and upon perusal of the pleadings, evidence and documents on record in the present case, the question that arises for consideration is whether the respondents were able to prove their case of bona fide need under Section 16(1) (g) of the Act of 1999 and consequently whether the decree of eviction granted against the applicants by the trial Court and confirmed by the appellate Court was justified.

9. Before embarking on analysis of the facts of the present case and the correctness of the judgments and orders passed by the Courts below, it would be relevant to refer to the scope of revisional jurisdiction as contemplated under Section 115 of the Code of Civil Procedure. It is well established that while exercising revisional jurisdiction under the aforesaid provision, the scope for interference with the orders of the Courts below is limited and the nature of jurisdiction is clearly distinct from appellate jurisdiction exercised by this Court. In revisional jurisdiction, this Court can interfere with the findings and orders of the Courts below if it appears that the Court below has exercised a jurisdiction not vested in it or has failed to exercise a jurisdiction so vested or the Court had acted in the exercise of its jurisdiction illegally or with material irregularity. In the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of Hindustan Petroleum Corporation Limited (supra) the scope of revisional jurisdiction exercised by the Courts under various Rent Control statutes was being considered. It is relevant that the revisional jurisdiction in the statutes that fell for consideration before the Constitution Bench of the Hon'ble Supreme Court in

the said case was wider than the scope of revisional jurisdiction

under Section 115 of the C.P.C. While analyzing the powers and scope of the Court under the Rent Control statutes that fell for consideration, in the

context of revisional jurisdiction, the Hon'ble Supreme Court observed the distinction between the revisional and appellate jurisdiction as follows :

“28. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a

quick observation about the “appellate jurisdiction” and “revisional jurisdiction” is necessary. Conceptually, revisional jurisdiction is a part of

appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding

has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate

court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited

by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but

ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When

the said of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without

saying that if a revision is provided against an order passed by the Tribunal/appellate authority, the decision of the Revisional Court is the operative

decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by

the statute conferring appellate jurisdiction and revisional jurisdiction.”

11. Thereafter, upon detailed analysis of the position of law regarding revisional jurisdiction, the Hon'ble Supreme Court in the said judgment held as

follows :

“43. We hold, as we must, that none of the above Rent Control acts entitles the High Court to interfere with the findings of fact recorded by the

first appellate court/first appellate authority because on re-appreciation of the evidence, its view is different from the court/authority below. The

consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that findings of facts

recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recoded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, it open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reAppreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal.â??

12. The aforesaid judgment of the Hon'ble Supreme Court was relied upon in a recent judgment in the case of Gulshera Khanam (supra). In this judgment, the Hon'ble Supreme Court analyzed the scope of revisional jurisdiction when there were concurrent findings of two Courts below on the question of bona fide need in favour of the landlord. In that case, the High Court had exercised revisional jurisdiction to interfere with the concurrent findings of the Courts below and it was held by the Hon'ble Supreme Court while reversing the judgment of the High Court that such an approach adopted by the High Court while exercising revisional jurisdiction was not justified because the High Court had erred in appreciating the evidence like a first appellate Court, while reversing the findings of the Courts below.

13. Therefore, the aforesaid position of law makes it clear that the scope of revisional jurisdiction is limited and this Court cannot reAppreciate the evidence and material on record while testing the correctness of the orders passed by the Courts below. In this context, the contentions raised on behalf of the applicants need to be analyzed to see whether the Courts below had indeed committed a jurisdictional error or that the jurisdiction was exercised illegally or with material irregularity.

14. On the question of bona fide need, the respondents, apart from pleading that their sons required about 15000 sq.ft. of land for setting up business

or expansion of the existing business, produced evidence on record in the form of a witness who was already running a showroom of two wheelers. It

has come in the evidence that a space of 4000 sq.ft. of land would be required for opening such a showroom and on this basis it was contended on

behalf of the applicants that if the need of one of the sons of the respondents stood satisfied by an area of land of 4000 sq.ft., there could be a case

for partial eviction and that the decree passed by the Courts below was wholly unjustified. It was further contended that details were not furnished by

the respondents about the exact area in occupation of the other son, who was already doing business in some part of the suit property and there was

hardly any evidence to support his case for further area of land for expansion of his activities.

15. A perusal of the judgment and order of the Court below demonstrates that the Court has taken into consideration the oral and documentary

evidence on record, particularly the evidence of the person produced by the respondents, who was already having a showroom of two wheelers. It

was found by the Court below that the evidence of the said witness did indicate the extent of requirement of one of the sons of the respondents who

intended to open a showroom of two wheelers. It was found that the said son was qualified and did intend to start the dealership of two wheelers and

that there was sufficient material to show that he indeed required space of about 10000 sq.ft. for the said purpose. It was further found that the other

son intended to set up printing press and manufacturing unit of pressing of boxes, for which he would require 4000 sq.ft. of land. This finding was also

returned by the trial Court and therefore, there are two concurrent findings in respect of bona fide in favour need of the respondents.

16. The contentions raised on behalf of the applicants would have been justified if there was absolutely no material brought on record or the material

on record placed by the respondents was wholly unbelievable. The findings rendered by the two Courts below on this aspect cannot be said to be in

the teeth of evidence on record or on the basis of any material which demonstrated any falsehood in the evidence produced in support of the

contentions raised on behalf of the respondents. In such a situation, it is not possible to hold that the Courts below had exercised jurisdiction illegally or

with material irregularity.

17. In any case, it is settled law that the landlord is the best judge of his need or requirement. It has been so reiterated in the aforesaid judgment of the

Hon'ble Supreme Court in the case of Gulshera Khanam (supra). In fact, in the case of Mohanlal (supra) in the context of plea of partial eviction this

Court has held as follows :

14. The landlord being the best judge of his need, the Appellate Court could not have directed the manner in which he should have conducted his

affairs by directing partial eviction. The decision relied upon in the case of Bismilla Bee (supra) on the aspect of partial eviction cannot be made

applicable to the facts of the present case especially when a finding that no hardship would be caused to the tenant was already recorded. Even

otherwise, as held in Motor Cycle House (supra), once bona fide need is proved, the question of hardship normally tilts in favour of the landlord. On

the facts of the case, it is clear that the decree for partial eviction despite absence of hardship to the tenant results in grave injustice and a case of

interference is made out. Hence to that extent the decree for partial eviction passed by the Appellate Court cannot be sustained.

18. Thus, it would be evident that the landlord being the best judge of his need. The tenants, in this case the applicants, could not have dictated the

terms by insisting upon various permutations and combinations regarding the area of land within which the sons of the respondents could have started

their respective businesses. Hence, the findings regarding bona fide need rendered by the Courts below do not deserve any interference.

19. The contention raised on behalf of the applicants regarding suppression of existence of other properties owned by the respondents is sought to be

supported by the Counsel on behalf of the applicants by placing reliance on the judgments of this Court. It is contended that when the Court finds that

the landlord has not disclosed the existence of other properties, an adverse inference needs to be drawn and the suit for eviction needs to be dismissed

only on that ground. A perusal of the judgments of this Court in the case of Tarachand (supra) and Vinod (supra) relied upon by the applicants, show

that this Court found the landlord who have suppressed vital information regarding other properties not only owned but in possession of the landlord

and that such properties were suitable to satisfy the bona fide need sought to be

projected by the landlord while seeking eviction of the tenant. In that context, this Court found that non disclosure of such relevant information by the landlord was a serious matter and on that ground an adverse inference was drawn against the landlord. An overall view of the facts of the case was taken by this court while finding that the case of bona fide need was not made out. In that context it was held the tenant was put to prejudice, particularly in support of his contentions regarding comparative hardship suffered by him.

20. In the present case, the applicants brought on record material to show that there were at least three properties owned by the respondents, which were not disclosed by them while seeking eviction of the applicants from the suit property. One such property was plot no.6 at Kadbi Chowk, Nagpur, (erroneously written as 'Talvi chowk' in the impugned judgment and order) the others being ancestral property at Sibabuldi and agriculture lands owned by the respondents. On this aspect, the witness appearing on behalf of the respondents was extensively cross examined. The material that came on record demonstrated that the aforesaid property situated on plot no.6 at Kadbi Chowk was purchased by the respondents on 30/07/1992 and that a tenant was in occupation of the same. At the time of filing of suit for eviction in the present case, the said property was occupied by a tenant. It also came on record in a proceeding initiated by the respondents and as per the compromise that was entered into between the parties before this Court, in the year 2007, the tenant vacated the aforesaid property situated on plot no.6 at Kadbi Chowk. The ancestral property at Sitabuldi, Nagpur was a house property and remaining properties were agricultural lands.

21. The question that needs to be considered is, whether the respondents had other properties which were available at the time when the suit for eviction was filed in the present case and more particularly whether such properties were suitable for the need that was projected by the respondents in the suit for eviction filed by them. In the material that has come on record it is found by the Courts below that even when the tenant vacated the aforesaid property situated on plot no.6 at Kadbi Chowk in 2007, it was still not available to the respondents because the lease of the suit properties was not renewed by the Nazul Department. Apart from this, the respondents had

specifically pleaded and placed evidence and material on record regarding the extent of land required for satisfying the bona fide need for which the suit for eviction was filed against the applicants. There is nothing to show that such need would have been satisfied by the aforesaid property situated on plot no.6 at Kadbi Chowk, quite apart from the fact that it was not available with the respondents when the suit for eviction was filed. The other property being ancestral house property at Sitabuldi, Nagpur would not be of any use to the respondents for the specific need that they had projected while filing the application for eviction. The remaining properties being the agricultural properties could not have been considered by the Courts below for the aforesaid case of bona fide need for which the respondents had filed the suit for eviction.

22. The Court below has dealt with this aspect of alleged suppression by the respondents and the claim by the applicants that adverse inference ought to be drawn against the respondents. It is found by the Courts below that in view of the material that had come on record, there was nothing to show that even if those properties were to be taken into consideration it could be said that they were available and suitable for the requirement of the respondents. Thus, it cannot be said that such finding rendered by the Court below was either illegal, perverse or suffered from material irregularity.

23. On the question of a waiver of forfeiture and application of Section 112 of the T.P. Act, 1882, a perusal of the said provision demonstrates that if the lessor does any act which shows an intention that he has treated the lease as subsisting, the forfeiture under Section 111(g) of the T.P. Act, 1882

would stand waived. In the present case, the respondents issued notice on 25-03-1998 to the applicants claiming that they had forfeited the tenancy.

On 30-11-2003, they issued a specific notice under Sections 15 and 16 (1)(g) of the Act of 1999, to the applicants demanding arrears of rent for

about 11 years and 5 months and thereafter they filed the suit leading to the decree of eviction passed by the Courts below against the applicants. The

issuance of the aforesaid notice dated 30-11-2003 and demand of arrears of rent would certainly qualify under the expression "any other act on

the part of the lessor showing an intention to treat the lease as subsisting" thereby demonstrating that there was a clear waiver of forfeiture.

24. It is, therefore, clear that the applicants in the present case have failed to

demonstrate any jurisdictional error committed by the Courts below by exercising jurisdiction illegally or with material irregularity. The findings rendered by the Courts below on the question of bona fide need, comparative hardship and entitlement of the respondents to seek eviction of the applicants cannot be said to be perverse and therefore they do not call for any interference.

25. Accordingly, the present Civil Revision Application, being without merit, is dismissed. No order as to costs.