

(2002) 06 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 1864 of 1997

Ashok Vithal Chavan and Ors

APPELLANT

Vs

Baburao Sakhamam Bhagat

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2002) 4 ALLMR 217 : (2002) 6 BomCR 736

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : R.S. Apte and S.M. Kelkar, for the Appellant; Suhasini Mutalik, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.

1.This writ petition under Article 227 of the Constitution of India takes exception to the order passed by Vth Additional District Judge, Pune dated 12th April, 1996 in Civil Appeal No. 290 of 1994.

2. The petitioners are landlords in respect of one shop premises situated at 936, Shukrawar Peth, Pune. The respondent is a monthly tenant in the suit premises. The petitioners instituted the suit before the Court of Small Causes Court at Pune, being Civil Suit No. 400 of 1989 for possession of the demised premises on the ground of bona fide requirement u/s 13(1)(g) as well as non user of the suit premises within the meaning of section 13(1)(k) and the tenant having acquired suitable premises u/s 13(1)(I) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Bombay Rent Act" in brief). The trial Court on analysing the materials on record dismissed the suit by order dated 11th August, 1994 and answered all the points against the petitioners. The petitioners carried the matter in appeal before the District Court, Pune in Civil Appeal No. 290 of 1994. The Appellate Court more or less affirmed the view taken by the trial Court

and confirmed the conclusion reached by the trial Court on all the three grounds referred to above. Thus, the Appellate Court was pleased to dismiss the appeal by order dated 12th April, 1996. This concurrent view taken by the two courts is the subject matter of the challenge in this writ petition.

3. The learned Counsel for the petitioners submits that the courts below have not properly analysed the evidence on record. According to him, the reasoning of the trial Court is wholly inappropriate, for the trial Court has not analysed the efficacy of the entire evidence which has come on record but has merely reproduced the same and recorded its conclusion to answer the issues against the petitioners. According to the petitioners, even the Appellate Court has considered matters which were not germane for deciding the issues. On this basis, the findings recorded by the two courts below with regard to the ground of bona fide requirement is being assailed. In so far as the ground of non user of the suit premises u/s 13(1)(k) of the Act is concerned, it is contended that the Appellate Court having recorded a clear finding that the respondent-tenant had failed to use the suit premises for a period of six months preceding the date of the institution of that suit was in error in dismissing the suit. Whereas, it ought to have decreed the suit on that count.

4. On the other hand, the Counsel for respondent has supported the reasons recorded by the trial Court. She fairly submits that it is possible to take a view that the reasoning noted by the courts below is not happily worded. However, she submits that the findings recorded by the Appellate Court on the issue of bona fide requirement more or less confirms with the view taken by the trial Court on that issue. Therefore, according to her the concurrent opinion of two courts below ought not to be interfered in exercise of the writ jurisdiction. In so far as the non user u/s 13(1)(k) of the Act is concerned, she submits that the findings recorded by the Appellate Court that the respondent was not using the suit premises for the relevant period is not supported by evidence on record. She however submits that it will not be necessary for this Court to go into the wider question since the Appellate Court was right in proceeding to reject the said ground because the landlords did not plead that the premises were kept closed by the tenant for more than six months "without any reasonable cause". Moreover, no evidence has been adduced on behalf of the landlords to establish that position, though it is possible to contend that the onus does not lie on the landlord. It is, therefore, submitted that in absence of pleadings and proof, regarding the factum of the premises were kept closed "without reasonable cause", no decree of possession could be restored to for want of essential ingredient to attract such provision.

5. Having considered the rival contentions, I shall first advert to the issue of bona fide requirement. No doubt, the Appellate Court has considered the fact that the plea set up by the petitioners that they were occupying only two rooms for residence stands belied by the documents on record which indicate that they were in fact in possession of 4 rooms. To my mind, that was wholly irrelevant for

considering the bona fide need of the landlords for business purpose. The fact remains that the landlords approached the Court with a specific plea that they want to shift the business activity which was being carried on in the present residential accommodation and for which reason the suit premises were required. In that sense, it is not possible to doubt the bona fide of the landlords for having claimed possession of the suit premises. However, that by itself was not sufficient. The next requirement to establish the ground u/s 13(1)(g) of the Rent Act is that the need established by the landlords should be a reasonable need. With regard to this aspect of the matter, the Appellate Court rightly referred to the relevant matters and found that there were sufficient premises presently in occupation of the landlord which could be utilised for the proposed business activity which was already being conducted in those premises. The Appellate Court has considered the relevant matter in paras 19 & 20 which read thus :

"Now let us consider the need of the landlords of the suit premises for business purpose. The three storied building consist of six rooms. This fact is not at all in dispute. During the pendency of the suit the Commissioner came to be appointed at the instance of the tenant to inspect this three storied building. The report is at Exh. 58. The Commissioner's report has made it clear that on the ground floor there are two rooms in front of these rooms, there is one ota (platform) which has been covered by the grills. Behind these two rooms there are two more rooms. Some open site is being used for carrying on the activities in connection with manufacturing ice-cream. The entire ground floor is being used for ice-cream business. Thus, it is apparent from the Commissioner's report that at present four rooms and two open sites on the ground floor are being used for manufacturing ice-cream. In addition to this one platform covered by grills is also being used for the customers, who occupy the seats for enjoying the ice-creams, as it is apparent from the Commissioner's report that nine chairs were found on the said platform.

10. In the background of this, the material question arises, whether four rooms, two open sites and one platform covered by the grills, which is almost like a room, are insufficient premises for carrying on the business of ice-cream and further the landlords required more premises of the same building for the said business. At the time of commission number of equipment required for carrying on ice-cream business were found installed on the ground floor. Four rooms and the open sites can not be said to be insufficient for carrying on the business of ice-cream. In view of this fact, the requirement of the rooms at the first and the second floor of the building for carrying on the ice-cream business can not be said to be genuine and bona fide. At the first and second floor of the building, the activities in connection with the manufacturing of readymade garments and the equipments in relation to the electric business are going on. The business of electric equipments is being conducted in property No. 337 Budhwar Peth, Pune, under the name and style" Floor Electrical .Thus the premises at the first and second floor of three storied building appears to be sufficient for carrying on the business of readymade garments. Thus, I find that the need of the suit premises

as put forth by the landlords is not genuine and bona fide one. Thus, in the above circumstances, I do not find that the plaintiffs genuinely need the suit premises as contended by them. Hence, I answer Point No. 2 in the negative."

6. I find no reason to take a different view of the matter. If this be so, then it will have to be held that the landlords have failed to establish that their need is reasonable. The abovesaid findings are obviously findings of fact recorded by the Appellate Court. The same reasoning has also weighed with the trial Court. Therefore, the said concurrent findings of fact cannot be interfered in writ jurisdiction. Both the courts below have taken the view that the present premises in occupation of the petitioners were sufficient to cater to the need set up by the petitioners to seek decree of eviction against the respondent. Understood thus, the need cannot be said to be reasonable and for which reason, no decree u/s 13(1)(g) of the Rent Act can be passed in such a situation. Accordingly, there is no infirmity in the ultimate conclusions reached by the two courts below that no decree u/s 13(1)(g) of the Rent Act could be passed in the fact situation of the present case.

7. Reverting to the ground of non user u/s 13(1)(k) of the Rent Act, it is true that the Appellate Court has recorded a finding of fact that the suit premises were not being used for a period of six months immediately preceding the date of institution of the suit. However, what is relevant to note is that Appellate Court has held that there was no pleading in the plaint that the demised premises were kept closed for more than six months by the respondent-tenant "without any reasonable cause". The Court below was right in placing reliance on the decision of the case of C.R. Shaikh v. Lilabai D. Rohida and another, reported in 1981 Mh.L.J. 437 that if there is no pleading in that behalf then it is incomprehensible that the plaintiff can be said to have made out a cause of action against the tenant to invoke that ground. The learned Counsel for the respondent has also placed reliance on the case of Shri Cyrus Behram Irani and another v. Shri Parvis Burjorji Engineer (since deceased by his heir) deft. No. (1) Dinoo Parviz Engineer and another, reported in 1991 Mah.R.C.J. 158 which has taken the same view. Accordingly, having regard to the admitted position from the record that the petitioners did not plead nor adduce any evidence to even suggest that the demised premises were kept locked for more than 6 months by the respondent-tenant "without any reasonable cause" as has been observed by this Court in the above said decision, no cause of action would arise to invoke that ground. No doubt, the onus on the landlord with regard to the factum of non user of the suit premises "without reasonable cause" is very light, but nonetheless the landlord has to allege that fact only when the provisions of section 13(1)(k) can be said to have attracted. Suffice it to point out that no pleading nor any evidence in that behalf is forthcoming from the landlords and, therefore, no fault can be found with the courts below in rejecting the decree on that ground.

8. The third ground which was pressed into service before the first Court for possession was that the tenant has acquired alternate premises, u/s 13(1)(1) of

the Rent Act. This ground was advisedly not pressed before this Court on behalf of the petitioners. The provisions of section 13(1)(1) of Act are attracted only when the tenant was occupying the demised premises for residence and succeeds in securing alternate premises for residence. In the present case, the shop premises was let out for business purpose for which reason section 13(1) (1) of the Rent Act will have no application.

Accordingly, there is no substance in this petition and, therefore, the same deserve to be dismissed with costs. Order accordingly.