

(2002) 07 BOM CK 0105
In the Bombay High Court
Case No : Writ Petition No. 4942 of 1993

Balwant P. Doshi	Vs	APPELLANT
Shantaben Dhirajlal Shah and Another		RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)

Citation : (2002) 4 ALLMR 388 : (2003) 2 BomCR 190 : (2002) 4 MhLj 473

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

Bench : Single Bench

Advocate : Usha Rahi, instructed by Mayur Narendra and Co, for the Appellant;
M.P. Vashi, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition, under Article 227 of the Constitution of India, takes exception to the order passed by the Small Causes Court at Bombay, Bandra Bench dated August 30, 1993 in Appeal No. 158 of 1991 in RAE Suit No. 76/207 of 1986. Briefly stated, the respondent No. 1 is the landlady in respect of residential premises situated on the first floor of Nemi Building, 83, Nutan Laxmi Co-op. Hsg. Scy. Ltd., J.V.P.D., Mumbai 400056. The suit building was constructed in the year 1966-67. Thereafter the respondent No. 1 inducted respondent No. 2 as a tenant on monthly basis. At the relevant time the respondent No. 1 was staying with her elder son at Sion. The premises at Sion were rented premises admeasuring 750 sq.ft. This fact has been established from the record, whereas the suit premises admeasure 1200 sq.ft. with 3 bed rooms, hall and kitchen. According to the respondent No. 1, since her requirement was growing because of the increase in the number of family members, after the marriage of her son, she required the suit premises for herself as well as for her other family members. Accordingly, suit for possession on the ground of bona fide and reasonable requirement u/s 13(l)(g) of the Bombay Rent Act was filed by the respondent No. 1 in the Small Causes Court at

Bombay being RAE Suit No. 76/207 of 1986. This suit was originally filed against the respondent No. 2 who was the tenant. Subsequently, the petitioner got himself impleaded in the said suit contending that he was occupying the suit premises on leave and licence basis since 1971 and that the leave and licence in his favour was subsisting on 1-2-1973, therefore, he became the protected licensee by virtue of Section 15A of the Bombay Rent Act. The petitioner's application for impleadment was allowed by the trial Court. Accordingly, the suit for possession was against the tenant as well as the petitioner who claimed to be the protected licensee, for possession of the suit premises on the ground of bona fide requirement. Both the parties thereafter went for trial. The trial Court after recording the evidence, by a well considered judgment and order dated 17-7-1991 running into about 141 pages, decreed the suit in favour of the respondent No. 1. Various issues were raised before the trial Court. To my mind, it will not be necessary to go into all those aspects for the reasoning which I propose to adopt a little later. Suffice it to mention that, the trial Court accepted the plea of the respondent No. 1 landlady that the suit premises were required bona fide and reasonable for herself and her family members. The trial Court also decided the issue of comparative hardship in favour of the respondent No. 1 landlady. Being dissatisfied, the petitioner, who was impleaded as defendant No.2, claiming to be the protected licensee, along preferred appeal before the Appellate Bench of the Small Causes Court. That appeal has been dismissed by the Appellate Bench by order dated 30-8-1993. The Appellate Bench has also affirmed the finding of facts recorded by the trial Court. Insofar as the conclusion on the issue of bona fide and reasonable requirement of the respondent No. 1 landlady is concerned, the Appellate Court has addressed to the factual matrix of the case particularly in paras 38 to 41 in the impugned judgment. The Appellate Court has held that taking overall view of the matter the respondent No. 1 had succeeded in establishing the bona fide and reasonable need in respect of the suit premises for herself and her family members. Even on the issue of comparative hardship the Appellate Court has taken the view that in fact the original tenant was not occupying the suit premises and since the leave and licence agreement relied by the petitioner was held to be suspicious document, there was no question of any hardship being caused to the tenant. The Appellate Court observed that, since the tenant was not personally occupying the suit premises, the question of causing any hardship to the tenant would not arise. Insofar the petition is concerned, the Appellate Court observed that the evidence on record would clearly indicate that he had kept on changing the residential premises in the past. In other words, the Appellate Court has taken the view that the respondent No. 1 plaintiff had no other premises for satisfying her requirement, which is established from the record. On the other hand, alternative premises were abundantly available in the locality as well as in the city. Accordingly, even the issue of comparative hardship has been answered against the petitioner and in favour of the respondent No. 1 landlady. It is this concurrent decisions which are subject matter of the present writ petition.

2. Before advertng to the rival contentions on merit. I would think it appropriate to mention that, before the trial Court one of the issue was - that the leave and licence document relied upon by the petitioner was palpably bogus document. That issue has been decided against the petitioner by both the Courts. That finding of fact cannot be reopened in writ jurisdiction. Once that finding is undisturbed, it necessarily follows that occupation of the petitioner in the suit premises was not as a licensee or for that matter protected licensee as contended. In that case, it will not be open for the petitioner to either challenge the decree passed against the tenant or to file writ petition in this Court. Nevertheless, since the writ petition has been filed and the same has been admitted, it is being considered on merits.

3. The Counsel for the petitioner assails the findings recorded by the courts below on the ground that they are perverse and therefore unsustainable. On the other hand, Mr. Vashi, learned Counsel for the respondent No. 1 contends that no infirmity can be found in the concurrent view taken by the two courts below particularly in respect of question of fact regarding the reasonable and bona fide need of the respondent No. 1 as also on the question of hardship.

4. After having considered the rival submissions, to my mind, no infirmity can be traced to the finding of fact recorded by both the Courts below that the petitioner was not in possession of the suit premises much less as a licensee on the basis of a subsisting licence on 1-2-1973. The court below for the reasons noted in their decisions have correctly doubted the genuineness of the alleged leave and licence relied by the petitioner. Once this finding is undisturbed, it necessarily follows that the petitioner is not a protected licensee and would get no right to assail the decree of possession. Assuming that, the petitioner is a protected licensee as claimed, even then since the petitioner has contested the suit claim of the respondent No. 1 of bona fide and reasonable requirement will be bound by that finding. Accordingly, if finding on that issue was to be upheld by this Court then the petitioner would also suffer the eviction decree and bound by the same. Therefore, I am straightway addressing this decision to the issue of bona fide and reasonable requirement instead of dwelling upon the issue of legality of the leave and licence agreement relied by the petitioner or his status as protected licensee. This is not to say that I accept the petitioner's contention that he is a protected licensee. Reverting to the merit of the issue of bona fide and reasonable requirement, the Appellate Court has neatly summarized the evidence adduced on behalf of the respondent No. 1. The respondent No. 1 has herself entered the witness box as well as examined her two sons as PW 2 and PW 4. No doubt the evidence of respondent No. 1 was not very elaborate but all the relevant details regarding the reasonable and bona fide need of the respondent No. 1 and her family members has been unmistakably stated by her sons viz. PW 2 and PW 4. Both the courts below have examined the evidence of the plaintiff's witnesses as a whole and have recorded clear finding of fact that the plaintiff has established the need for herself and her family members being bona fide and reasonable. These findings of fact cannot be interfered in exercise

of writ jurisdiction. The Appellate Court has rightly applied the settled legal position. It is well settled that the courts cannot ordinarily doubt the bona fide need of the landlord nor the courts can dictate to the landlord as to how the premises owned by him should be used. It is sufficient for the landlord to express his desire to occupy the premises which are owned by him. It is not necessary for the landlord to establish the dire necessity but it is enough to show that some need exists. (See *Prativa Devi Vs. T.V. Krishnan*,). In the present case, the plaintiff has produced ample evidence on record and has established the bona fide need for herself and for her family members. Both the Courts below have analysed the evidence of plaintiff's witnesses and have held that the need pressed into service by the plaintiff was also reasonable because the plaintiff was presently staying with her son at Sion which was a rented premises in the name of her son. The courts below have rightly applied the settled principle that when the landlord who is staying in the rented premises desires to stay in his own accommodation then the Courts, as a rule should not refuse the decree. It is relevant to note that both the Courts below have also held that the premises presently occupied by the respondent belongs to her son which is a rented premises and only admeasures 750 sq.ft. whereas the suit premises are 1200 sq.ft. with 3 bed rooms. Understood thus, the Courts below have rightly held that the respondent No. 1 plaintiff has established the reasonable and bona fide need in respect of the suit premises. I have no hesitation in affirming the said view taken by the courts below.

5. Reverting to the issue of the comparative hardship, the courts below were right in observing that the issue of comparative hardship will be relevant only, in the context of the requirement of the tenant and not in relation to some other occupant of the suit premises and when that occupant has no right to continue in the premises. In the present case, the courts below have recorded a clear finding of fact that the plaintiff has no other alternative premises. It is also established from the record that the plaintiff was staying along with her elder son Naresh at Sion in a rented premises. In this view of the matter, the plaintiff had discharged her burden regarding the issue of comparative hardship. On the other hand, since the respondent No.2, who was the original tenant was staying abroad for more than one decade, it is incomprehensible as to how he would suffer any hardship if the decree was to be passed. The petitioner before this Court is in no way related to the respondent No.2. Whereas, the petitioner claims to be in occupation on account of leave and licence agreement executed in his favour. Efficacy of that document has already been examined by two courts below and they have come to the conclusion that the said document appears to be bogus and unreliable. In that sense there would be no occasion for this Court to examine the issue of comparative hardship insofar as the petitioner is concerned, who has no legal right to continue to remain in possession. In any case, the Courts below have rightly taken into account that the evidence would clearly indicate that the petitioner has kept on changing the premises in the past. Moreover, no evidence is brought on record by the petitioner to show that it is

not possible to secure alternative accommodation in the same locality for that matter in any other part of the city. It is well settled that onus is on the defendant to establish that the defendant will not be able to secure any alternate premises in the same locality or in any other part of the city. If this evidence is lacking, the Court will have no option but to answer the issue of comparative hardship against the defendant. This position is well settled (See Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others,). I have considered the question of standard of onus on the parties on this issue, by referring to several rulings in the case of L. V. Venkateswaran in W.P. 3816 of 1989 decided on May 3, 2002. Incidentally, I have also examined the settled legal position on the question of nature of proof on the issue of bona fide and reasonable requirement in the same decision.

6. In this view of the matter, I have no hesitation in affirming the view taken by the two courts below that the plaintiff would suffer greater hardship in the event the decree was to be refused.

7. While parting I may observe that I do not think it necessary to go into other aspects raised on behalf of the respondent No.1 about the conduct of the petitioner during the pendency of this proceedings. In fact substantive applications have been filed by the respondent No.1 in that behalf, since I have affirmed the decree passed by the two courts below it will not be necessary to examine those questions. Mr. Vashi fairly submits that since decree for possession is being confirmed by this Court, he will not press those applications as filed, being Civil Application No. 1590 of 2001 as well as Civil Application No. 3434 of 2000. Suffice it to mention that the grievance in these applications is that the petitioner had not paid any amount to the respondent No.1 landlady towards compensation in respect of the suit premises during the pendency of the writ petition in this Court.

8. Accordingly, this writ petition fails and the same is dismissed with costs all throughout. No orders on Civil Applications.

9. At this stage Mr. Vashi learned Counsel for the respondent No.1 points out that pursuant to the interim order passed by this Court the possession of the suit premises have been taken over by the Court Receiver and presently it is in his possession. The Court Receiver to take appropriate steps to forthwith make over the possession of the suit premises to the respondent No. 1 in accordance with law. Order accordingly.

10. All concerned to act on the copy of this order duly authenticated by Sheristedar of the Court.