

(2009) 12 BOM CK 0095

In the Bombay High Court

Case No : Civil Revision Application No. 244 of 2007

Bismilla Bee and Khajamiyan

APPELLANT

Vs

Anwar

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(2)
Maharashtra Rent Control Act, 1999 — Section 13(1), 13(2), 16, 16(1), 16(2)

Citation : (2010) 1 ALLMR 889 : (2010) 2 BomCR 63 : (2011) 1 RCR(Rent) 174

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : A.S. Bajaj, for the Appellant; P.F. Patni, for the Respondent

Judgement

R.K. Deshpande, J.—This civil revision application is preferred by the original respondents-tenants against whom a decree for eviction from the suit premises has been passed by VII Joint Civil Judge, Junior Division, Aurangabad on 30.12.2002 in Rent Suit No. 22/2001, on the ground of bonafide requirement and same is maintained in Rent appeal No. 2/2003, dismissed by the District Judge at Aurangabad, by his judgment and order dated 03.10.2005.

2. The facts leading to this case are as under:

The respondent is landlord, filed Rent Suit No. 24/2001 in the Court of Civil Judge, Senior Division, Aurangabad against the applicant-tenant, for eviction on the grounds of willful default, demolition of the premises and bonafide requirement. In this revision, we are concerned only with the ground of bonafide requirement and in respect of that the landlord pleaded in the suit that the defendants are the tenants in the house, which consists of two rooms with toilet unit. It was pleaded that the respondent-landlord has five sons and two daughters and the house, which is in his possession, is not sufficient to accommodate the entire family. The mother of the landlord is also residing with him, and he therefore requires the premises in occupation of the tenant, for his bonafide requirement of residence. The applicants-tenants filed their written

statement and denied that the landlord has five sons, two daughters and that his mother is also residing with him, as alleged. The applicants-tenants also denied that the landlord required the premises for his bonafide use i.e. for his residence purpose.

3. The respondent-landlord filed his affidavit by way of evidence in support of his claim and stated that he has five sons and two daughters, and the house in his possession, is not sufficient to accommodate the entire family. He also stated that his old mother is also residing with him and the area in his occupation, which is having three rooms, is not sufficient to accommodate the entire family of 10 persons, and, therefore, his need is bonafide and genuine. He was cross examined on the aspect of total members of his family, and he stated that he has five sons and two daughters and was prepared to place on record the documentary evidence to that effect. The petitioner No. 2 examined himself in support of his defence and stated in his evidence that the plaintiff-landlord is in possession of another house, which is owned by him and the house in his possession is sufficient for accommodation of his entire family. He stated that the need putforth by the landlord is not bonafide. He has further stated that the petitioner No. 1 is his old mother and he is a labourer earning Rs. 400/- to Rs. 500/- per month and he has no alternative accommodation to shift. He has further stated that he is in occupation of two rooms, open space, latrine and bathroom and is occupying the same since last 50 years.

4. The Trial Court framed the issues as to bonafide requirement of respondent-landlord and comparative hardship of the petitioners-tenants. The Trial Court specifically dealt with the question about the number of family members of the respondent-landlord and recorded a finding that the landlord has proved that his family includes his five children, old mother, himself and his wife. The finding is also recorded that the evidence shows the respondent-landlord is in occupation of two blocks. The further finding is that the evidence on record suggests that the demand put forth is reasonable and bonafide, to meet the demand of his growing family. On the question of comparative hardship ,the Trial Court recorded a finding that the petitioner No. 1-tenant is the old lady, whereas, the petitioner No. 2 is her son and is doing the labour work, and these facts have gone unchallenged. The findings on comparative hardships are almost in favour of tenants, but the ultimate order is against them.

5. On Appeal, the Appellate Court recorded a finding that the landlord has five sons and two daughters, and the premises in his possession is not sufficient to accommodate all the family members. It has further recorded a finding that the old mother of landlord is residing with him, and therefore, the requirement put forth is reasonable and bonafide. It has further recorded finding that although, an attempt is made by the defendants-tenants that the landlord was in possession of another house. The said fact has neither been pleaded nor the said plea has been substantiated. It has further recorded a finding that the landlord has purchased the premises with a sole intention to accommodate the entire

family and there was no suppression of facts. So far as comparative hardship is concerned, the Appellate Court recorded a finding that the tenant has put forth his financial incapacity to acquire suitable accommodation, and if some time is granted to the tenant to get alternative accommodation, no hardship will be caused to him, if the decree of eviction is granted. The Appellate Court dismissed the appeal and granted three months time to the tenant to vacate the premises. The applicants are the original defendants and tenants in the suit premises, who shall hereinafter be called as "applicants-tenants". The respondent is a landlord and original plaintiff, who had filed the suit and shall hereinafter be referred as 'respondent-landlord'.

6. Shri Bajaj, the learned Counsel for the applicants-tenants urged that the landlord is guilty of suppression of material facts, which amount to practicing fraud upon the Court, and hence, the need put forth was not bonafide. He has urged that the landlord has only two sons, although he has stated in his application that he has five sons and two daughters to magnify alleged bonafide need. He has further urged that immediately before the proceedings for eviction were filed, the landlord had sold the part of the property on 03.07.2001 and the said fact has been suppressed by the landlord. Thus, the conduct of the landlord is not bonafide. He relied upon the decision of the Hon"ble Apex Court reported in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , more particularly the paragraph Nos. 4, 6 and 7 of the said judgment. He has further relied upon the decision of the Hon"ble Apex Court reported in A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, , more particularly the paragraph Nos. 22, 24 and 26 of the said judgment. Shri Bajaj further urged that the trial Court recorded finding on the aspect of comparative hardship in favour of the tenant, but ultimately granted a decree. He further urged that the question of extent of requirement, was also required to be established and enquiry in respect of the partial eviction should have been considered; in view of Sub-section (2) of Section 16 of the Maharashtra Rent Control Act, 1999.

7. Shri. Patni, the learned Counsel appearing for the respondent-landlord has urged that the Courts below have recorded concurrent findings of fact, regarding the bonafide need of landlord as well as comparative hardship of the tenant. The findings are in favour of the landlord and there is no perversity pointed out in recording such findings. In respect of the plea of suppression of facts, he urged that the tenants had sufficient opportunity to cross examine the landlord who had entered into witness box and to bring on record the evidence to substantiate his plea. He has urged that on the question of number of members of family, the landlord was cross examined, and the trial Court has recorded finding that the landlord has proved that he is having five sons and two daughters. So far as the sale of property is concerned, he urged that the said property was sold before institution of the proceedings and there were no pleadings in the written statement. He further urged that although, the sale deed was brought on record, the property was sold for the treatment of his ailing mother. He further urged

that now at this stage, such evidence and plea, which is raised for the first time, should not be entertained. He further relied upon the Judgment of the learned Single Judge of this Court reported in 2009(9) LJSOFT 160 (Chotumal Bahiramal Sindho since deceased Through his L.Rs. v. Baburao Vinayak Mohadkar (Since deceased) Through his L.Rs.). Shri.Patni urged that if at all, the premises are not used, then the tenant can institute the proceedings u/s 18(2) of the Maharashtra Rent Control Act, 1999.

8. The question of reasonable and bonafide requirement is governed by Section 16(1)(g) and Section 16(2) of the Maharashtra Rent Control Act, 1999 (Hereinafter referred to as "said Act") which is extracted below:

16(1) Notwithstanding anything contained in this Act but subject to the provisions of Section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied-

(a) to (f) ***

(g) that the premises are reasonably and bonafide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust;

16(2): No decree for eviction shall be passed on the ground, specified in Clause (g) of Sub-section (1), if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only.

Explanation.- For the purposes of Clause (g) of Sub-section (1), the expression "landlord" shall not include a rent-farmer or rent-collector or estate-manager.

9. It can not be disputed that the burden of proof to establish that the premises are reasonably and bonafide required, as contemplated u/s 16(1)(g), is upon the landlord. The requirement is composite one, reasonable and bonafide. The reasonableness of requirement is connected with the extent of requirement of the premises by the landlord whereas, the bonafide requirement relates to the intention of landlord in seeking eviction and possession of the suit premises. If the requirement is not found to be reasonable then no decree for eviction can be passed. If it is found to be reasonable then, the question of extent of such requirement will have to be gone into. Thus, the question of reasonableness of requirement u/s 16(1)(g) is interlinked with the second part of Sub-section (2) of Section 16 of the said Act, which is reproduced above.

10. Sub-section (2) of Section 16 states that no decree for eviction shall be

passed on the ground specified in Clause (g) of Sub-section 16, if the Court is satisfied that having regard to all the circumstances of the case, including the question whether other reasonable accommodation is available for the landlord or the tenant, the greater hardship would be caused by passing the decree rather than refusing to pass it. When Sub-section (2) uses the phraseology "Other Reasonable Accommodation", it is referable to the premises other than those which are in possession of the landlord or tenant on the date of institution of proceedings and it does not relate to the premises, which are not possessed by the landlord on the date of filing of application for eviction.

11. The provision of Sub-section (2) of section 16, is incorporated for the benefit of the tenant and therefore, the burden of proving greater hardship, so as to deprive the landlord of his established right to seek eviction, lies on the tenant. In this respect, the decision of the Apex Court reported in *Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada*, rendered on the provision of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 needs to be looked into. The provisions of Section 13(1)(g) and Section 13(2) of the said Act, are in pari materia with the provision of Section 16(1)(g) and Section 16(2) of the Maharashtra Rent Control Act, 1999, which are reproduced earlier. Para 7 of the said Judgment, which is relevant, is reproduced below:

7 A perusal of the scheme of the Act, so far as the ground of reasonable and bona fide requirement by the landlord for occupation of residential or non-residential premises is concerned, shows that Clause (g) of Sub-section (1) of Section 13 contemplates a decree for eviction being passed on proof of availability of the ground according to law. In spite of a ground for eviction u/s 13(1)(g) having been made out, the court may deny the relief of eviction if the issue as to comparative hardship is answered against the landlord and in favour of the tenant. Thus, in a way, Section 13(2) acts as a proviso to Section 13(1)(g); the former having an overriding effect on the latter. The burden of proving availability of ground for eviction u/s 13(1)(g) lies on the landlord; the burden of proving greater hardship so as to deprive the landlord of his established right to seek eviction lies on the tenant.

In view of the aforesaid decision of the Apex Court, it is clear that the provision of Section (2) of Section 16 of the Maharashtra Rent Control Act, acts as proviso to Section 16(1)(g); the former having overriding effect on the latter.

12. The Sub-section (2) of Section 16 of the said Act is cauched in a negative language. It is an injunction operating against the Court not to pass decree of eviction, if it is satisfied that the greater hardship would be caused to the tenant by passing the decree, than by refusing to pass it. The requirement is mandatory and once the satisfaction contemplated therein is reached, it leaves no choice to the Court but refuse to pass the decree of eviction. Thus, even if the Court is satisfied that the landlord has made out a case of reasonable and bonafide requirement as contemplated by Section 16(1)(g) of the said Act, still the Court shall refuse to pass a decree for eviction of the tenant, if the satisfaction under

Sub-section (2) of Section 16, is attained by the Court.

13. Then comes the second part of Sub-section (2) of Section 16, dealing with partial eviction. The said provision is also in pari materia with the provision contained in second part of section (2) of Section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The decision of Apex Court in Badrinarayan's case, cited supra also throws light on this requirement and para 10 and 11 of the said Judgment, which are relevant, are reproduced below:

10. The provisions of the Act do not bar a partial eviction being ordered rather contemplate a partial eviction specifically-which would of course depend on the answer to the question-whether it would be enough to dislodge the tenant from only a part of the premises in his possession, and to what extent, to satisfy the proved requirement of the landlord associated with consideration of comparative hardship. If the court is satisfied that the ends of justice would be met if the tenant is not called upon to vacate the entire tenancy premises but only a part of it, then the court may order partial eviction so that the requirement of the landlord is satisfied and the tenant is also not deprived of his running business activity. Inasmuch as Section 13(2) entails the consequence of the landlord being denied decree of eviction, wholly or partly, in spite of his having proved reasonable and bona fide requirement within the meaning of Section 13(1)(g), the burden of proving availability of grounds u/s 13(2) of the Act is on the tenant. It is expected of the parties to raise necessary pleadings, and the court to frame an issue based on the pleadings so as to enable parties to adduce evidence and bring on record such relevant material as would enable the court forming an opinion on the issue as to comparative hardship and consistently with such finding whether a partial eviction would meet the ends of justice. Even if no issue has been framed, the court may discharge its duty by taking into consideration such material as may be available on record.

11. The Act does not lay down any guidelines or relevant factors based whereon the question of comparative hardship is to be decided. A slight indication is given in the first para of Section 13(2) that regard must be had to: (i) all the circumstances of the case, (ii) including the question whether other reasonable accommodation is available for the landlord or the tenant. The expression "other reasonable accommodation" as employed here does not mean an accommodation suitable in all respects as the suit accommodation is. The legislature has chosen it appropriate to leave the determination of issue on sound discretion of the Court.

14. Thus, the requirement under Sub-section (2) of Section 16 of the said Act, is also interlinked with second part of Sub-section (2) of Section 16. Hence, the entire provision of Section 16(1)(g) and 16(2) with the second part has to be read as a whole and is required to be harmoniously construed to give effect to every provision made therein. The object of introducing the provision of second part of Sub-section (2) of Section 16, is to balance the requirement u/s 16(1)(g), on one hand and the satisfaction u/s 16(2), on the other hand. It casts statutory

duty upon the Court to make an enquiry to the extent of need of landlord even if, such need is found to be reasonable and bonafide. The right of landlord to seek eviction on one hand and the protection granted to the tenant on the ground of comparative hardship on the other hand, can be balanced by the Court by making enquiry into the extent of need of landlord and passing a decree for partial eviction from the suit premises, to meet the ends of justice. Such an exercise is required to be carried out by the Court, irrespective of the fact whether party demands it or not and this view is supported by the aforesaid law laid down by Apex Court, when it says that even if no issue has been framed, the Court has to discharge its statutory duty. If this exercise is not carried out by the Court then certainly, it would result not only in failure to exercise jurisdiction, but would be a failure to perform statutory and mandatory duty, resulting in failure of justice and shall vitiate decree passed.

15. In the light of aforesaid provisions of law, the findings recorded by the Courts below are required to be considered. No doubt, there is concurrent findings recorded by Courts below that the landlord has established that he has five sons and two daughters and in spite of having sufficient opportunity to bring on record the evidence to dispute the claim of the landlord, the tenants have failed to bring any material on record. There is no perversity in recording such finding by the Courts below and a view taken by Courts below is possible view. Any challenge to such finding, as raised by Shri. Bajaj the learned Counsel for the applicants, would amount to interfering with the disputed questions of facts, which is not permissible in revisional jurisdiction of this Court.

16. So far as the question of sale of property by the landlord on 03.07.2001 is concerned, it was before institution of proceedings for eviction. On the date of institution of proceedings, this accommodation which was already sold and the same was not available with the landlord. The requirement of Section 16(1)(g) r/w Section 16(2), is in respect of the disclosure of the premises/area in occupation/use of the landlord, on the date of institution of the proceedings. Hence, non-disclosure of such sale on 03.07.2001, by the landlord in his application, in my opinion, does not amount to suppression of any material facts. Apart from this, there is no pleading by tenant in written statement in respect of such sale. It is for the tenant to specifically plead such fact and bring on record the evidence to establish the animus possidendi or oblique motive, on the part of the landlord. Even the sale was prior to institution of proceedings, the tenant had a full opportunity to raise appropriate plea in respect thereof and to avail full opportunity, to place evidence on record. The tenant has, in the instant case, failed to plead this fact and has further failed to avail an opportunity provided to him by the Trial Court. The enquiry in to such questions involve resolution of disputed questions of facts. If this plea had been raised by the tenants, the landlord would have got sufficient opportunity to defend it. Hence, such a plea can not, for the first time, be entertained by this Court, in revisional jurisdiction.

17. So far as the question of comparative hardship is concerned, as pointed out

earlier the Trial Court has recorded almost all findings in favour of the tenant but the ultimate decision in favour of the landlord. The Appellate Court has negated the plea of tenant, regarding the comparative hardship on the ground that if the tenant is given reasonable time to vacate the premises, such eventuality can be cured or met with. In my opinion, no such finding can be recorded without any inquiry by the Court. As pointed out earlier, the requirement of second part of Sub-section (2) of Section 16 regarding the assessment of extent of requirement of the landlord, is aimed at striking of balance between the reasonable and bonafide requirement of the landlord and comparative hardship likely to be caused to the tenant. This provision is held to be mandatory. The exercise contemplated by second part of Sub-section (2) of Section 16 is required to be carried out by the Court itself, to arrive at satisfaction contemplated by Section 16(2); both the parts. There is absolutely no evidence on record and no discussion in the judgments delivered by both the Courts below, on this aspect. The Appellate Court could not have recorded the finding against the tenant on the aspect of comparative hardship to the tenant, without carrying out exercise as contemplated by both the parts of Sub-section (2) of Section 16 of the said Act. In view of this, the decree passed by the Trial Court, as maintained by the Appellate Court, will have to be quashed and set aside and the matter will have to be remanded back to the Trial Court, for enquiry into the extent of need of the landlord and the comparative hardship, likely to be caused to the tenant, because of complete eviction from the suit premises.

18. In the result, this revision application is partly allowed. The findings recorded by the Courts below in respect of reasonable and bonafide requirement of the landlord u/s 16(1) (g) of the said Act, is maintained. The matter is remanded back to the Trial Court to assess the total requirement of the landlord and to comply with both the parts of Sub-section (2) of Section 16 and to record a finding on the aspect of comparative hardship likely to be caused to the tenant; either by complete eviction or by partial eviction from the suit premises. It is, however, made clear that the findings as to reasonable and bonafide requirement of the landlord has not been interfered with by this Court and the Trial Court shall not make any enquiry in the said aspect of the matter. No order as to costs.