

(2015) 03 BOM CK 0210

In the Bombay High Court

Case No : Writ Petition No. 2074 of 1992

Govind Laxman Mankar and Others

APPELLANT

Vs

Dattatraya Ramkrishna Borlikar

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12 (3)
(a), 12 (3) (b), 13 (1) (c), 13 (1) (g), 13(1)(c)
Criminal Procedure Code, 1973 (CrPC) — Section 255 (2)
Penal Code, 1860 (IPC) — Section 323, 34, 451, 504, 506

Citation : (2015) 03 BOM CK 0210

Hon'ble Judges : N.W. Sambre, J

Bench : Single Bench

Advocate : R.L. Kute, Advocate h/f R.N. Dhorde, Senior Counsel, for the Appellant; V.S. Bedre, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.W. Sambre, J.—This petition is by the plaintiff-landlord. The petitioner-landlord, on or about 14th December 1978 filed Regular Civil Suit No. 914 of 1978 in the Court of 5th Joint Civil Judge, Junior Division, Ahmednagar against the respondent in relation to the suit property in which the respondents are inducted as tenants. It is claimed by the petitioner that the suit property is located in Ward No. 1, bearing City Survey No. 52, Municipal House No. 5806. It is further claimed by the petitioner that the defendants-tenants are in possession of three rooms on the ground floor of which possession was sought. The possession was sought mainly on the ground of nuisance and annoyance i.e. Section 13(1)(c) of the Bombay Rent, Hotel and Lodging House rates control Act, 1947 (hereinafter referred to as "the Act" for the sake of brevity), bona fide need i.e. Section 13(1)(g), willful default - Section 12 (3) (a) and 12 (3) (b) of the Act.

2. The said suit was resisted by the tenant by filing written statement. The learned trial Court dismissed the said suit by judgment and order dated 28th October 1986 which was subject matter of challenge in Regular Civil Appeal No.

56 of 1987. It appears that the tenant also preferred an application for fair rent which was answered against the tenant permitting him to file Civil Revision Application No. 4 of 1987. We are concerned with the rejection of the claim of landlord qua the possession of the suit property, as the tenant has not questioned the findings recorded in the revision. The learned 4th Additional District Judge, Ahmednagar was pleased to dismiss the said appeal by judgment and order dated 10th February 1992. As such, the present petition against the concurrent findings.

3. The facts, as are necessary for consideration of issues involved in the present petition are as under :

4. The suit property narrated herein above which is located near Delhi Gate bearing City Survey No. 52, Municipal House No. 5806 was let out to defendant No. 1-respondent herein at a monthly rent of Rs.23/- and the taxes were to be paid extra. The tenancy was created some twenty years back from the date of filing of suit i.e. from year 1978 and tenancy was to commence from 1st day of every month and was to end on last day of English calender.

5. The petitioner in the plaint claimed that the defendant No. 1 was not using the premises properly and was indulged in activities which are damaging floor and structure of the house and also was keeping his boiler in between the entrance of the two rooms which has caused nuisance to the plaintiff-petitioner. It was also claimed that the respondent provoked the other tenants to initiate criminal proceedings against the petitioner.

6. In addition to above, it is claimed that the respondent, in collusion with step brother of the petitioner has broke open the lock on 5th September 1983. It is further claimed that the suit premises were required by the petitioner for his bona fide need, as according to him, the existing premises which are in his possession, are not sufficient.

7. In response to suit, the respondent - defendant No. 1 has filed written statement at Exh.17 and denied the claim. So far as defendants No. 2 to 10 are concerned, they being formal parties, are not arrayed as party-respondents in the present petition. It is claimed by defendant No. 1 in his defence that the plaintiff has no right, title and interest to the suit property. The defendant No. 1, having denied the claim of the plaintiff-petitioner, has proceeded to file an application for determination of standard rent.

8. Having regard to the claim put forth by the parties, learned trial Court has framed the following issues and answered the same accordingly.

ISSUES

1. Does plaintiff prove that description of the suit property is correct ?
2. Does plaintiff further prove that the suit in the present form is maintainable ?
3. Does the plaintiff further prove that the defendant No. 1 is the tenant in the

suit premises as alleged in plaint para No. 3?

4. Does he further prove that defendant No. 1 is a nuisance as alleged in plaint para 4 ?

5. Does he further prove that the suit premises are required by him, bona fide, reasonably for his own use and occupation ?

6. Does he prove that defendant no.1 is a wilful defaulter in payment of rent for more than six months as alleged ?

7. Is the notice to quit is legal and valid ?

8. Who will suffer a greater hardship of the decree for eviction is passed ?

9. What is the rent of the suit premises and the present rent excessive ?

FINDINGS

1. In the affirmative

2. In the affirmative

3. In the affirmative

4. In the negative

5. In the negative

6. In the negative

7. In the affirmative

8. To the defendant

9. Contractual rent is the standard rent of the suit premises.

9. The issues as regards the nuisance and annoyance, as provided under Section 13(1)(c) of the Act and Section 13(1)(g), i.e. bona fide need, were answered against the plaintiff-landlord, petitioner herein. The learned trial Court has noted that for seeking possession of property in question under the head, "bona fide need", the plaintiff landlord must prove his case with cogent evidence, as the burden is on the plaintiff to do so. The Court proceeded to analyse the evidence and has noted that the issue of bona fide need was not properly proved.

10. So far as the issue as regards nuisance or annoyance is concerned, it appears that after filing of the suit, the sons of the respondent-tenant have indulged into criminal act which prompted the present petitioner to invoke the clause under Section 13(1)(c) of the Act, as upon a complaint case initiated at the behest of petitioner in the Court of Chief Judicial Magistrate, Ahmednagar in Criminal Case No. 3678/1978, the sons of the respondent, who were residing with him were convicted under Section 255 (2) of the Cr.P.C. for offence punishable under Sections 451, 323, 506 read with Sec.34 of the Indian Penal

Code. It is informed that the said conviction is maintained but for reduction in the punishment by the appellate authority.

11. Said being one of the grounds available to the landlord, the said issue was also pressed into service by the landlord before the trial Court, as evidence was permitted to be led in support thereof. Learned trial Court, having noticed that the ground of nuisance is required to be proved by establishing the continuous activity, the said issue was also answered against the present petitioner.

12. The lower appellate Court, for its consideration, framed the following points for determination and answered the same accordingly.

13. So far as the above referred issues are concerned, i.e. Section 13 (1) (c) and Section 13 (1) (g) of the Act, the possession sought under the clause `nuisance' and `annoyance', both were answered against the present petitioner. Learned lower appellate Court, while dealing with the issue of bona fide need, perhaps was not canvassed by the petitioner, has not framed a point for consideration on that aspect and has proceeded to decide the issue of nuisance under Section 13 (1) (c) of the Act. Learned lower appellate Court, while analysing the case of the present petitioner, though has referred to Criminal Case No. 9034/1976 initiated against the petitioner by one of the tenants, in which the wife of respondent - tenant was shown as witness, however, in the said criminal case, the present petitioner was acquitted.

14. Learned Counsel for the petitioner-landlord, while pressing the need for possession, has invited attention of this Court to the decision given by the Chief Judicial Magistrate, Ahmednagar in Criminal Case No. 3678/1978 which was initiated by the petitioner against the sons of the respondent who were residing with him, for offence punishable under Sections 451, 323, 504 read with sec.34 of the Indian Penal Code. The said case was initiated by the petitioner on the ground that the sons of the respondent, on 31st July 1978 assaulted the petitioner Govind with fists blows and so also gave kicks to him. Learned Chief Judicial Magistrate has convicted the sons of the present respondent by judgment dated 13th November 1979 and said conviction was maintained even in an appeal. He would further urged that the said fact, if tested in the light of requirement of Section 13(1)(c) of the Act, the only conclusion that could be drawn from the said fact and the evidence brought on record is, the act of the tenant is contrary to the said provisions and as such, was entitled for the relief of possession. He has pressed into service the said provisions i.e. Section 13(1)(c) of the Act which read thus :

"13. When landlord may recover possession

(1) Notwithstanding anything contained in this Act [but subject to the provisions of sections 15 and 15A], a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(c) that the tenant or any person residing with the tenant has been guilty of

conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers, or has been convicted of using the premises or allowing the premises to be used [for immoral or illegal purposes; or that the tenant has in respect of the premises been convicted of an offence of contravention of any provision of clause (a) of sub-section (1) of section 394 or of section 394-A of the Bombay Municipal Corporation Act."

15. While countering the above referred submissions, Mr. Bedre, learned Counsel for respondent would urge that the said incident has happened out of misunderstanding and at a spur of moment, as the request of the tenant was not accepted by the petitioner-landlord. According to him, the said incident being isolated one, cannot be taken into account for referring the provisions of Section 13(1)(c) of the Act. He would further urge that this Court in the matter of Manoramabai w/o Vishwanath Limaye since deceased through legal heirs and legal representatives Smt. Manoramabai Limaye, since deceased through legal heirs and legal representatives (Shri Arun Vishwanath Limaye and Shri Waman Vishwanath Limaye) and Shri Waman Vishwanath Limaye Vs. Smt. Pramila Vijay Phansalkar, (2011) 7 ALLMR 292 : (2011) 6 BomCR 389 : (2011) 2 RCR(Rent) 517 has observed that a particular act, omission, or conduct whether amounts to nuisance, is required to be decided based on the gravity of such incident and according to him, the incident which is illustratively quoted in the present case does not reflect the very mind of the tenant to create any nuisance or annoyance and as such, the Court below has rightly rejected the claim. He would further urge that this petition being against the concurrent findings recorded by both the Courts below, is required to be dismissed, as this Court should be very slow in interfering in the findings of facts recorded by Courts below, as such, according to him, the petition is liable to be dismissed.

16. Having considered the rival contentions of the parties, it is required to be noted that the present petitioner-landlord initiated proceedings in December 1978 for possession of the suit premises on the ground stated herein above viz. bona fide need - Section 13(1)(g) and the possession on the ground of nuisance and annoyance i.e. under Section 13(1)(c) of the Act. Though he suffered concurrent findings, however, it is not in dispute that the sons of the respondent tenant suffered conviction at the hands of Chief Judicial Magistrate, Ahmednagar, upon complaint lodged by the petitioner-landlord for offence punishable under Section 451, so also under Section 323 for causing hurt to the petitioner-landlord. It is not in dispute that the said conviction was upheld before the higher Court but for reduction in amount of fine/punishment. If the said fact is tested in the light of requirement of Section 13(1)(c), it is required to be noted that the language as is used in said Section contemplates the responsibility of tenant to behave properly. The fact remains that the sons of respondent-tenant who were convicted i.e. have been found guilty of conduct narrated in the said judgment, which is placed on record, takes this Court to the conclusion that the said conduct amounts to satisfaction required under the provisions of Section 13(1)(c) of the Act.

17. For drawing the above referred conclusion, if we analyse the findings recorded by both the Courts below on that count, it is required to be noted that the learned trial Court has noticed that merely because the sons of the defendant No. 1 are convicted in criminal case, that is not sufficient to prove nuisance in order to evict the tenant from the said premises. Learned trial Court has taken into account the fact that other tenants having not lodged any complaint written or oral with the landlord regarding alleged nuisance or annoyance caused by respondent-tenant and as such, proceeded to decide the said issue against the present petitioner. Even, the lower appellate Court, while dealing with the said issue has proceeded to discuss the meaning of the word, "Nuisance" and has noticed that though the conviction was maintained subject to reduction of punishment, the sons of the defendant No. 1, who have committed trespass, assault and threatened the petitioner on 31st July 1978 cannot be accepted as causing annoyance or nuisance to the petitioner-landlord. If the above referred observations are tested in the light of the findings recorded by this Court in the matter of Gulam Husain Mirza Vs. Laxmidas Premji alias Sagar Premji and Another, (1984) 1 BomCR 520 : (1984) MhLj 215 , it is required to be noted that this Court in paragraphs No. 14, 15 and 16 observed thus :

14. These judgments and the principles available in these precedents do make out a workable applicative formula. As stated earlier, to be a nuisance, an act or omission must be such that unlawfully interferes with other persons use, enjoyment or entitlement of the property or rights therein. Such interference would have an annoying result, for that would affect the ordinary pleasures of men and trouble their minds. Annoyance in a given case would, thus, be a result of nuisance. By itself "annoyance", therefore, is a term of wider amplitude and would include all that is disagreeable to good sense and against fair and just habitation. All that is disagreeable and interfering with the pleasurable enjoyment of the ordinary occupants of their premises would be within its ambit. Annoying conduct is irritative conduct. It gives rise to discomfort and displeasure and affects the reasonable peace of mind. It also gives rise to unpleasant feeling amongst men and also gives occasion to raise objections. In short, whenever there is a civil trespass upon and with regard to the use and enjoyment of the property of others, nuisance would be answered and whenever such a trespass results in irritable and disagreeable situation, annoyance can be found. So stated, nuisance could be treated as a specie of annoyance. Therefore, all nuisance may be "annoyance" but all the acts of annoyance may not amount to nuisances. Actionable or not, annoyance could be established by reason of the fact that the given conduct interferes with the ordinary comforts and pleasures of persons.

15. As the section itself shows, it is the conduct that thereunder comes in issue. While considering nuisance and annoyance, that conduct or behaviour complained of will have to be objectively appreciated. It may have relation either to the rights and enjoyment of the property or other rights and entitlements of persons who, as ordinary men, are entitled to have peaceful, trouble-free and

ordinarily comfortable situation. These entitlements are basic in human society. Those are to be judged by the given standard or norms available in such society. If a given conduct adversely affects such entitlement or encroaches thereupon, then the conduct would be within the mischief of the clause. One must hasten to add that the phrase employed by the statute being of wider amplitude, there is always a possibility of overstraining the meaning so as to include even the trifle and trivial matters. That is why every conduct should be judged in the context and fairly. Without being elaborate or exhaustive, it can safely be said that all that conduct which is offensive, quarrelsome or violent, unethical in juxtaposition of peaceful, civil and by ordinary standard ethical would be within the mischief. Matters of physical assaults by one against other would attract squarely the clause so also other types of subtle assaults that offend human senses. Such acts may affect the peace and interfere with the pleasurable enjoyment of the property and, consequently, be within the mischief. Similarly, cases where property is trespassed upon and appropriated to one's own use to the exclusion of others' entitlement would be within the mischief of nuisance. Whenever question arises under the clause, first the conduct or behaviour that is in issue should be fairly and objectively ascertained and then, secondly, its effect in relation either to the property or the persons occupying the property should be taken into account. All this should be done in keeping with the social background of the given society, having norms of reasonable peace, comfort and enjoyment as well as in the light of the entitlements of the occupiers regarding the specific property. Having considered all these three aspects, if the conclusion is reached that the conduct was such which affected or tended to affect the reasonable entitlements of ordinary normal expectations of life, then all that this clause intends would be clearly answered.

16. Law would surely look a loathsome ass if leases were to be sacrificed at the altar of love of roses, or for tending and culturing rose plants. But the law is not such a loaded ass. Law is a protector of balance between fair and unfair, just and unjust, reasonable and unreasonable, entitlement and non-entitlement. Not the love of roses, but the appropriation of others' property and trespass on others' entitlement by keeping rose-pots and occupying the property that is in issue. Such a conduct by itself is objectionable and is fraught with challenges and conflicts. It also interferes with the reasonable comfort and entitlements of other occupiers to use the given species of the property. It cannot be forgotten even in the background of rose, that one man's hobby may be another man's taboo; one man's medicine another man's poison and one man's joy another man's annoyance. By providing this clause, the law strikes a balance. It promotes peace and furthers good sense and fair behaviour. These are the normative pivots on which cohabitation in society rests. In law, there is always scope for defence of justification and so also for setting up of claims to property. But when along with these something more exists, such as unilateral appropriation in utter disregard of others' comfort or entitlement, such a defence can hardly be enough."

18. If the above referred observations are taken into account, what is required to

be inferred from the fact as regards conviction of the sons of the defendant No. 1 is that their conduct was nothing but to cause annoyance and nuisance to the petitioner-landlord. It is not in dispute in the present case that the landlord was residing in the same premises and as such, is governed within the ambit of Section 13(1)(c) which speaks of causing nuisance or annoyance to the adjoining or neighboring occupiers. The conduct of the sons of the tenant of assaulting and causing injury to the petitioner-landlord would in clear terms be governed within the ambit of nuisance or annoyance as prescribed in the said Section. The term, 'nuisance' is of wide amplitude which covers the variety of circumstances and it cannot be limited to define restricted meaning, however, the same can be inferred from case to case basis. In the case cited supra, the Court has considered such conduct of the tenant which reasonably troubles the mind and pleasure of landlord or of an ordinary sensible inhabitant of a house, would be an annoyance. In the present case, the act of the sons of the tenant who were residing with the tenant was unlawful and interference with the enjoyment of property of the landlord. The said conduct of the sons of the tenant has put the landlord in discomfort and displeasure and has also affected reasonable peace of mind. The said act has a direct relation to the right of enjoyment of property by the landlord who was entitled to peaceful and in trouble free manner enjoy the same to his comfort. The conduct of the tenant and his sons has adversely affected the rights of the landlord, as they have encroached upon the rights of the landlord and as such, the said conduct can be covered within the mischief of the provisions.

19. Though respondent-tenant has relied upon the judgment of Manoramabai Vs. Pramila (cited supra), if we look into the observations made in the said judgment, particularly which are relied upon by the learned Counsel for respondent in paragraphs No. 10, 11 and 12, it is required to be noted that the fact which was considered by the Court in case of Manorama was in relation to violation of provisions of Section 13(1)(c) of the Act.

20. In the case in hand, the sons of tenant, who were residing with him, caused trespass, caused injury to the petitioner-landlord which has resulted in their conviction. As such, the law laid down in the case of Manorama will be hardly of any assistance to the respondent tenant.

21. In my view, both the Courts below have proceeded to answer the issue under Section 13(1)(c) of the Act against the present petitioner without considering the very object and requirement of said section. The facts narrated herein above takes this Court to the only conclusion that the petitioner-landlord has established his case based on the cogent evidence within the four corners of requirement of Section 13(1)(c) of the Act i.e. the prayer for possession based on the conduct of respondent-tenant of causing annoyance and nuisance.

22. As such, the present petition succeeds. The judgment and order dated 28th October 1986 passed by the 5th Joint Civil Judge, Junior Division, Ahmednagar in Regular Civil Suit No. 914 of 1978 and the judgment and order dated 10th

February 1992, delivered by the 4th Additional District Judge, Ahmednagar in Regular Civil Appeal No. 56 of 1987 to the extent of refusing permission for possession, are hereby quashed and set aside.

23. It is declared that the petitioner-landlord is entitled for possession of the suit property in view of provisions of Section 13(1)(c) of the Act.

24. In the facts and circumstances of the case, the costs is quantified as Rs.3,000/- (Rs. Three thousand), to be paid by the respondent-tenant to the petitioner-landlord within a period of six weeks from today.

25. Writ Petition stands allowed. Rule made absolute in above terms.

26. After allowing the present petition, Mr. Bedre, learned Counsel for respondent-tenant submits that the respondent-tenant, having regard to the fact that he is in possession of the property for almost last 40 years, be granted six months" time to surrender the possession.

27. The request is strongly objected by learned Counsel for the petitioner, as according to him, the petitioner-landlord is persuading the remedy since 1978.

28. Having regard to the background that the present respondent tenant is in possession of the property in question since last more than 40 years, it will be appropriate to grant the request made by Mr. Bedre, on behalf of the respondent-tenant on following conditions:

(i) The present respondent-tenant shall file an undertaking before this Court within a period of two weeks that the respondents-tenants who are in possession of the suit premises shall surrender vacant possession of the property in question in favour of the petitioner landlord by 30th September 2015 and shall also mention in the undertaking that they shall not cause any damage to the suit premises and shall maintain the same in proper condition.

(ii) The undertaking by tenants shall also mention that they have paid up to date rent to the petitioner-landlord and shall deposit the rent of next six months within a period of two weeks in this Court, which the petitioner-landlord shall be entitled to withdraw.

(iii) If such undertaking is not submitted before this Court by the respondent-tenant, the petitioner-landlord will be at liberty to execute the decree.