

(2014) 03 BOM CK 0095

In the Bombay High Court

Case No : Civil Revision Application No. 38 of 2014

Hiralal Dagdulal Pagaria and Another

APPELLANT

Vs

Vasantlal Haridas Bhanushali

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

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

Citation : (2014) 5 ALLMR 578

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : P.F. Patni, for the Appellant; B.A. Darak, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—This proceeding is filed against the judgment and order of Rent Suit No. 10 of 2005 and Rent Appeal No. 2 of 2013. The suit was filed in the Court of the Civil Judge, Junior Division, Aurangabad and the decision given in favour of the landlord was challenged in the District Court Aurangabad. The suit for relief of eviction on the ground of bona fide requirement for personal use of the landlord and on the ground of default was decreed by the trial Court. Relief of recovery of arrears of rent was also given. In appeal filed by the tenant, the judgment and decree given on the ground of default is set aside but remaining decision is confirmed by the appellate Court. Both sides are heard. The suit was filed u/s 16(1)(g) of the Maharashtra Rent Control Act, 1999. The property bearing CTS No. 8956 and Municipal No. 4-17-72 admeasuring 78.34 square meters situated at Juna Mondha Aurangabad is involved in the matter. This property is in the possession of present applicants. The property was previously owned by one Shri. Shroff. It is contended that on monthly rent of Rs. 1000/- the property was given to the applicant by said Shroff. Present respondent, landlord, purchased the property from Shroff on 9-12-2002. It is contended that both, the landlord and the previous owner, had informed the present applicants about the said transaction. It is contended that present respondent had given notice on

27-12-2004 to the tenant and he was asked to pay arrears of rent and he was asked to vacate the premises as landlord wanted the premises bona fide for personal use for starting business of his younger son. It is contended that the defendant is living in Pune and he is not using the suit premises. It is also contended that the premises is in dilapidated condition. Statutory notice was issued to the tenant. Notice was received by the tenant on his address from Pune though the notice sent at address of tenanted premises was returned.

2. The defendant admitted in the written statement that he lives in Pune. He further admitted that he was not doing any business in the suit property. He however denied that the previous landlord had given him intimation of the aforesaid transaction. He denied that the notice of eviction was served on him. He has specifically contended that the suit property was not in his possession. In view of this defence, the defendant contended that there was no question of giving eviction decree against him.

3. To prove his case, the landlord, plaintiff examined himself and he examined previous owner Shri. Shroff. Initially the suit was decreed ex-parte. When the execution proceeding was filed the tenant applied for setting aside the ex-parte decree and the matter was remanded back by the appellate Court for fresh trial. Then the tenant filed written statement and the aforesaid contentions came to be made. Both the plaintiff and his witness were cross-examined by the learned counsel appointed by the tenant. The tenant did not step in witness box.

4. The landlord has given evidence that he requires the suit premises for bona fide personal use, for starting business for his younger son. He has given evidence that his son is unemployed and he wants to start new business there. He has deposed that notice was sent to the defendant and it was served at the address given from Pune in December, 2004. Evidence is given that the defendant was not using the premises for business and he was living in Pune. He has given evidence that hardship will be caused to him if possession is not given to him.

5. In the written statement, a strange defence was taken by the tenant that he is not occupying the suit premises as tenant and is not doing business therein. The record shows that the applicant/tenant took steps and he paid arrears of rent to avoid eviction. In view of this circumstance, no weight can be given to the aforesaid defence which is not substantiated by giving evidence.

6. Cross examination of the landlord made by the counsel appointed by the tenant is mainly on some mistakes committed in describing the suit property in the statutory notice and in the plaint. This cross examination need not be considered in view of the fact that the suit property is correctly described in the suit and at present the matter is being considered on the ground of bona fide requirement for personal use. The other cross examination is on the point whether the defendant was found running shop in the suit premises. There is no evidence from tenant in this regard. It is brought on the record during cross-

examination that there is a shop in the suit premises and on the date of evidence the shop was running. This circumstance cannot be considered as the defendant has not stepped in witness box.

7. In the cross examination of the landlord it is brought on record that portion situated on northern side of the suit premises is owned by the landlord. The evidence given by the landlord is that, his elder son is running business there. The property is purchased under sale deed and the same property is in possession of the tenant and so not much can be made out about the discrepancy in the description of the suit property.

8. As there is no evidence in rebuttal, the case of the landlord that he needs the property bona fide for the use of his son who wants to start business needs to be accepted as it is.

9. The scope of revisional jurisdiction is limited. Reliance is placed by learned counsel of applicant on the case reported as Sukhadeo Krishnarao Ghatode Vs. Laxmibai Dattatraya Mohoril, . In this case this Court has observed that element of necessity needs to be established and mere desire of the landlord to have the premises vacated is not sufficient. It is further observed that question of reasonableness is relevant in deciding bona fides of the landlord. It is observed that onus is on landlord to prove in that regard. Similar observations are made in the case reported as M/s. Hotel Rosalia (P.) Ltd. Vs. M/s. Metro Hotels and Others, . In the case reported as Sitaram Narayan Shinde and Others Vs. Ibrahim Ismail Rais and Others, also similar observations are made. In the case reported as Kishinchand Murjimal and Others Vs. Bal Kalavati and Others, observations made are that Court is expected to consider hardship of the plaintiff and the defendant.

10. Learned counsel for the respondent landlord has placed reliance on Chotumal Bhiramal Sindho (since deceased through his legal heirs and representatives Sudama Jodharam Hanswani and Others) Vs. Shri Baburao Vinayak Mahadkar (since deceased through L.Rs. and heirs. Shri Dattatraya Baburao Mohadkar and Others), . In this case this Court has held that when suit is for possession, for bona fide requirement for personal use, the tenant must plead and prove the fact that, it is not possible to get another alternative premises in the same locality. It is observed that the issue of comparative hardship should necessarily be answered against the tenant if he fails to discharge the onus. It is held that, even if the son for whom the premises is required is not examined, it cannot be a ground to non suit the plaintiff. The facts of this reported case show that the tenant had no male issue. In the present case there is pleading to the effect that the tenant was living in Pune and he was not doing business in the suit premises. Thus, on the point of requirement of tenant, the ratio can be used.

11. The law is changed and at present it is the tenant who is required to prove that greater hardship will be caused to him if decree of eviction is given against him. As the tenant has not stepped in witness box to give evidence in rebuttal

there was no other alternative before the trial Court but to hold that tenant has failed to prove that greater hardship will be caused to him.

12. In the case reported as Dinesh Dande Vs. Somani Radio Corporation and Others, where permission was sought of the authority to terminate the tenancy and the decision was taken to the High Court, it was observed that the authority needs to presume that landlord is best judge of his needs and eviction order needs to be given. In the present case there is no evidence brought on record by the tenant that there is other premises available for the landlord where his younger son can start business.

13. In the case reported as Usha P. Kuvelkar and Others Vs. Ravindra Subrai Dalvi, the Apex Court has made it clear that bona fide requirements of landlord and his family members needs to be considered.

14. In the case reported as 1999 (2) Mh. L.J. 793 (Dattatraya v. Abdul) the Apex Court has laid down that absence of existence of any business cannot lead to inference of absence of bona fides of landlord.

15. In the case reported as 2003 (4) Mh. L.J. (Dwarka Prasad v. Niranjana) it is laid down by the Apex Court that when ground of personal need is given for eviction, the provision in the legislation about bona fide requirement of landlord can be extended to family members. It is observed that when there is such case, the provision needs to be liberally interpreted.

16. Thus, position of law has changed since decisions given by this Court in the past on which reliance is placed by applicant and the burden is on the tenant to prove that greater hardship will be caused to him.

17. In view of the facts of this case, this Court holds that the Courts below have not committed any error in giving decree of possession to the landlord on the ground of bona fide requirement for personal use.

18. The scope of revision against such decision is limited one. The scope of revision by High Court is discussed in the cases reported as Helper Girdharbhai Vs. Saiyed Mohamad Mirasaheb Kadri and Others, and Sunil Mulchand Jain Vs. Smt. Purnima Prakash Kulkarni, Kum Ashvini Prakash Kulkarni, Kum. Vishakha Prakash Kulkarni, . It is held that if, on evidence, two views are possible and one of the two views is taken by the trial Court, interference is not possible in the revision. It is laid down that if the trial Court has arrived at decision, after appreciating the material and relevant facts, interference in the decision of the trial Court is not possible. It is laid down that if the provisions of law have been correctly borne in mind by the trial Court no interference is possible.

19. The discussion of the material of the present case and the position of law show that the law is correctly applied by both the Courts to the facts of the present case. The tenant has failed to discharge the onus which was on him and he came with strange defence in the written statement. His conduct also needs to be kept in mind. He first allowed the Court to make ex-parte decree and after

about two years he took steps for setting aside the decree. Even when the decree was set aside and opportunity was given to him to file written statement and lead evidence, no evidence in rebuttal was given. In view of these circumstances this Court holds that it is not possible to interfere with the decision given by two courts below.

20. In the result the following order:-

21. The civil revision application stands dismissed. Request was made to give time of eight weeks as the tenant wants to challenge the decision of this Court. In view of the conduct of the tenant and the aforesaid circumstances this Court holds that time of four weeks can be given. The decree is not to be executed for four weeks from the date of this decision.