

(2022) 07 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No.3134 Of 2022

Jain Supari Centre And Others

APPELLANT

Vs

Rameshlal Motilal Hasoriya And Others

RESPONDENT

Date of Decision : 27-07-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 20 Rule 12
Bombay Rents Hotel And Lodging House Rates Control Act, 1947 — Section 13(1)(g),
13(2), 16(1)(g), 16(2), 34

Citation : (2022) 07 BOM CK 0076

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : Akshay Naik, S.S. Sitani

Final Decision : Partly Allowed

Judgement

Manish Pitale, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the rival parties.

(2) The tenants are before this Court challenging concurrent decrees passed against them by the two Courts below under the provisions of Maharashtra Rent Control Act, 1999, thereby directing their eviction from the suit premises. The respondent Nos.1 and 2 are the landlords, who had initiated the said proceedings before the Small Causes Court at Nagpur.

(3) The case of the said respondents was that being the lawful owners of Municipal House No.2 situated at Ward No.36, Mouza-Nagpur, Maskasath, Kirana Oli, Taluka and District – Nagpur, they filed a suit for eviction of the petitioners on the ground of bonafide need. The petitioners were inducted as tenants in ground floor shop admeasuring 789 sq.ft and part of first floor admeasuring 120 sq. ft. in the said building for commercial use in the year 1990. They were inducted by Prabhadevi Motilal Hasoriya and after her death, the respondent

Nos.1 and 2 became lawful owners of the said property and the tenancy was continued by executing an agreement on 01.01.2013.

(4) The respondent Nos.1 and 2 pleaded that amongst his three sons, the elder son was assisting him in business and two other sons having turned major were interested in starting their own business and hence, the tenanted premises were required to start business, being suited for the said need. Similarly, the respondent No.2 pleaded that his elder son was assisting him in business while the younger son, having turned major, was interested in starting his own business and that the tenanted premises were best suited for the said purpose. On the basis of the said bonafide need projected on behalf of respondent Nos.1 and 2, they sought eviction of the petitioners from the suit premises.

(5) The petitioners filed their written statement and denied the claims made by respondent Nos.1 and 2. The Small Causes Court framed points for consideration and the rival parties led oral and documentary evidence in support of their respective stands. The respondent Nos.1 and 2 examined four witnesses in support of their case while the petitioners examined two witnesses.

(6) On the basis of the oral and documentary evidence brought on record, by judgment and order dated 10.02.2020, the Small Causes Court decreed the suit and directed the petitioners to handover vacant possession of suit premises to respondent Nos.1 and 2, within thirty days and also directed a separate enquiry to be held for future mesne profits as per Order 20 Rule 12 of the Code of Civil Procedure, 1908 (CPC). In the process of holding in favour of respondent Nos.1 and 2, the Small Causes Court gave positive findings in their favour on the question of bonafide need, as also comparative hardship. It was specifically held that the respondent Nos.1 and 2 had succeeded in making out a case under Section 16(1)(g) of the aforesaid Act pertaining to bonafide need.

(7) Aggrieved by the said judgment and decree, the petitioner filed appeal under Section 34 of the said Act, before the District Court. By the impugned judgment and order dated 06.12.2021, the District Court dismissed the appeal and confirmed the decree against the petitioners.

(8) In the present writ petition, on 14.06.2022, this Court issued notice on a limited question as regards Section 16(2) of the aforesaid Act, particularly second limb thereof, which pertains to the aspect of decree of eviction that could be passed for part of the premises in question. While issuing notice itself, this Court was satisfied that the findings rendered concurrently by the two Courts below, on the question of bonafide need, did not deserve interference. The respondent Nos.1 and 2 appeared in the matter through counsel and the petition was taken up for disposal.

(9) Mr. Akshay Naik, learned counsel appearing for the petitioners submitted in the present case that the Courts below had completely ignored the requirement of Section 16(2) of the aforesaid Act, particularly the second limb thereof. It was submitted that the aspect of greater hardship was not properly analyzed on the

basis of material on record and that the question as to whether decree of eviction could be passed in respect of only part of the premises, was not examined at all by the Courts below. By referring judgment of the Hon'ble Supreme Court in the case of Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, 2003 (2) SCC 320 and judgments of this Court in the case of Bismilla Bee w/o SK. CHAND and anr. Vs. Mohd. Anwar s/o MOHD. AKHTAR 2010(2) Mh.L.J. 829, Shri Ramesh s/o Danchand Waswani Vs. Yusufbhai Mukhtar Amir Varawalla (Writ Petition No.132/2011, decided on 28.02.2011) and Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh & anr. 2015 (5) Bom.C.R. 243, it was contended that Section 16(2) of the said Act, particularly the second limb thereof casts a statutory duty upon the Court to make an enquiry as to the extent of need of the landlord, even if such need is found to be reasonable and bonafide. On this basis, it was submitted that when the Courts below did not pay attention to the aforesaid aspect of the matter at all, the decree deserved to be set aside.

(10) On the other hand, Mr. Sitani, learned counsel appearing for contesting respondent Nos.1 and 2 submitted that the Courts below had indeed referred to the aspect of comparative hardship, examining as to which party would suffer greater hardship and thereupon, the decree for eviction was passed against the petitioners. It is submitted that therefore, the requirement of Section 16(2) of the said Act stood satisfied. It was submitted that the contentions specifically raised on the basis of second limb of Section 16(2) of the said Act did not deserve consideration, for the reason that there was sufficient material to demonstrate that the aspect of greater hardship could not be found in favour of the petitioners, and that the contention pertaining to eviction from part of the premises was not raised at any stage on behalf of petitioners. By placing reliance on the judgments of this Court in the case of Chetan Anand Shetty and Ors. Vs. Indrajeet Chandrasen Shirole and Ors, 2013 (3) Mh.L.J. 310 and Mohanlal s/o Chandulal Agrawal Vs. Navalkishor s/o Radheshyam Kulwal 2016 (1) Mh.L.J. 735, it was submitted that at this stage, the petitioners were not entitled to raise such a contention to seek interference with the concurrent orders passed by the two Courts below.

(11) Having heard the learned counsel for the rival parties, this Court is of the opinion that a limited issue arises for consideration in the present case. As noted above, notice was also issued only on the limited issue pertaining to Section 16(2) of the aforesaid Act. Insofar as the question of respondent Nos.1 and 2 having made out the case under Section 16(1)(g) of the said Act, pertaining to bonafide need, this Court considered the concurrent judgments and orders of the two Courts below, in the light of the oral and documentary evidence on record. This Court is satisfied that in the light of such evidence, particularly admissions given by the petitioners that the specific bonafide need projected on behalf of respondent Nos.1 and 2 was fully justified by the evidence placed on record. Therefore, no interference is warranted in the said finding.

(12) But, Section 16(2) of the said Act assumes significance because it acts as a

fetter on granting decree of eviction even if the ground of bonafide need is made out by the landlord under Section 16(1)(g) thereof. It would be relevant to specifically refer to the aforesaid provision, which reads as follows:

"Section 16 – When landlord may recover possession

(1).....

(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 promises, the court shall pass the decree in respect of such part only."

(13) A bare reading of the said provision shows that it consists of two limbs. Firstly, that no decree of eviction can be passed on the ground of bonafide need under Section 16(1)(g) of the Act, if the Court is satisfied on the basis of material on record and factors indicated therein that greater hardship would be caused by passing the decree than by refusing it. The second limb mandates that where the Court is satisfied that no hardship would be caused either to the tenant or 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.

(14) A *pari materia* provision i.e. Section 13(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, came up for consideration before the Hon'ble Supreme Court in the case of *Badrinarayan Chunilal Bhutada* (*supra*). After commenting upon the first limb of such *pari materia* provision, in respect of the second limb pertaining to partial eviction from the suit premises, the Supreme Court observed as follows:

"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 under Section 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."

(15) This Court in the case of Bismilla Bee w/o SK. CHAND and anr. (supra) referred to the aforesaid judgment of the Supreme Court and in the context of the second limb of Section 16(2) of the said Act, specifically held as follows:

"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 under Section 16(1) (g), on one hand and the satisfaction under Section 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 bona fide. 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."

(16) The said position was followed in the case of Ramesh s/o Danchand Waswani (supra) and the matter was remanded to the appellate Court to enquire as to whether a decree of partial eviction could be passed under second limb of Section 16(2) of the said Act. In the case of Vasant Mahadeo Gujar (surpa), this Court relied upon the said position laid down in the case Bismilla Bee w/o SK.

CHAND and anr. (supra).

(17) Thus, it is clear that the Court, while considering grant of decree of eviction under Section 16(1)(g) of the Act, is necessarily required to conduct enquiry under Section 16(2) thereof, and that both the limbs of the aforesaid Sub-Section need to be harmoniously construed so that the aspect of hardship is considered in the context of eviction from the entire premises or part of the premises.

(18) Insofar as reliance placed on behalf of the respondent Nos.1 and 2 on the judgments in the case of Chetan Anand Shetty and Ors. (supra) and Mohanlal Vs. Navalkishor (supra) is concerned, a perusal of the said judgments shows that this Court refused to permit the landlord to raise a contention on the aspect of partial eviction under second limb of Section 16 (2) of the said Act, because the Courts below had recorded emphatic findings about comparative hardship against the tenants and it was found that there was sufficient evidence to show that eviction of the tenant from the entire premises was clearly justified. It was held that, it was too late in the day for the tenants to raise the question of partial eviction.

(19) In the present case, although this Court is satisfied about the findings rendered against the petitioners on the question of bonafide need under Section 16(1)(g) of the said Act, it needs to be examined whether the exercise expected to be carried out under Section 16(2) of the said Act was indeed undertaken by the Courts below or not.

(20) A perusal of the judgment and order passed by the Small Causes Court shows that a specific point regarding greater hardship was framed and that finding in that regard was rendered in favour of respondent Nos.1 and 2. The Small Causes Court analyzed the oral and documentary evidence on record to render a finding that the respondent Nos.1 and 2 would suffer greater hardship if the petitioners were not evicted, than the hardship which the petitioners would suffer in case of their eviction. There was no discussion or analysis of the evidence on record on the second limb of Section 16(2) of the said Act, pertaining to partial eviction of the petitioners.

(21) A perusal of the impugned judgment and order passed by the District Court would show that while a point was indeed framed on the question of greater hardship that either of the parties would suffer, in the reasons recorded in the said judgment, the entire discussion pertaining to the oral and documentary evidence on record was only with regard to the question of bonafide need under Section 16(1)(g) of the said Act. While the said findings cannot be found fault with, the impugned judgment and order of the District Court shows that after having rendered findings in favour of respondent Nos.1 and 2 on the question of bonafide need under Section 16(1)(g) of the said Act, there was no discussion at all on the question of comparative hardship or as to which of the contesting parties would suffer greater hardship in the context of the eviction decree. The

discussion in the judgment of the District Court was entirely on the aspect of bonafide need, with no discussion on comparative hardship and the appeal stood dismissed, thereby confirming the decree of eviction.

(22) This Court is of the opinion that by failing to consider the aspects pertaining to Section 16(2) of the said Act, the District Court committed an error in confirming the eviction decree. In the absence of any consideration as to whether both limbs of Section 16(2) of the said Act, were satisfied or not, the District Court could not have dismissed the appeal. It would have been a different matter, if the appellate Court had analyzed the oral and documentary evidence on the question of greater hardship, to reach an emphatic finding regarding the entire tenanted premises, to hold in favour of the respondent Nos.1 and 2. But, in the absence of any discussion and finding at all, the appeal could not have been dismissed. To that extent, the impugned judgment and order is erroneous.

(23) In the case of Ramesh s/o Danchand Waswani (supra), this Court considered the aspect as to whether in such a situation, this Court should remand the matter to the Small Causes Court or the District Court i.e. appellate Court and found that the matter could be remanded to the appellate Court to avoid unnecessary delay in further proceedings on the limited question that arises under Section 16(2) of the said Act.

(24) It was specifically observed that if necessary, even the appellate Court could record evidence and decide the said limited issue by giving proper opportunity to the parties. This Court is inclined to follow the same course of action.

(25) In view of the above, the writ petition is partly allowed as follows:

(a) The impugned judgment and order dated 06.12.2021 passed by the District Court, which was the special Court for differently abled persons, senior citizens and marginalized section of society, in Regular Civil Appeal No.118/2020, is quashed and set aside.

(b) The matter is remitted back to the said Court to decide the aforesaid appeal for considering the question of greater hardship as contemplated under both the limbs of Section 16(2) of the said Act.

(c) Insofar as the second limb of Section 16(2) of the said Act pertaining to partial eviction is concerned, the said Court shall hold an enquiry on the basis of material already available on record and if need be grant opportunity to the parties to lead evidence on the aspect of partial eviction as contemplated in the second limb of Section 16(2) of the said Act.

(d) Since the respondent Nos.1 and 2 had approached the Small Causes Court way back in the year 2016 to seek eviction of the petitioners, the said Court is directed to decide the appeal within four months from today.

(26) It is made clear that except to the extent directed above, the appellate

Court shall not reopen findings recorded on other aspects.

(27) Rule made absolute in above terms. Pending applications, if any, stand disposed of.