

(2009) 12 BOM CK 0102
In the Bombay High Court
Case No : Wirt Petition No. 1554 of 1997

Jamshid Ahamad Khan

APPELLANT

Vs

Additional Collector (having Rent Control Appellate Powers),
Smt. Sheelarani Chhabda, Shri Dharamvir Chhabda and
Amarjeet Chhabda

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 2 BomCR 810

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : K.H. Deshpande, for the Appellant; Kankale, A.G.P. for Respondent No. 1 in Wirt Petition No. 1554 of 1997, I.L. Bodade, AGP for Respondent No. 1 in Wirt Petition No. 1642 of 1997 and Sharma, for Respondent Nos. 2, 3 in Wirt Petition Nos. 1554, 1642 of 1997, for the Respondent

Judgement

C.L. Pangarkar, J.—These two writ petitions can be disposed of by common judgment since the landlord in both the matters is common and he seeks permission as against both the tenants on the same grounds. Tenants are the petitioners.

2. The facts giving rise to the petition are as follows Respondents are the owners of the suit property. The suit property is a shop located in a market known as "Chhabda Market". The petitioners are the tenants therein. The rent is Rs. 250/ per month. They were in arrears of rent. Respondent No. 1, therefore, filed a civil suit against the petitioners claiming arrears of rent. The said suits were decreed. In spite of the decree, the entire decretal amount was not paid and tenants were in arrears of rents up to the date of filing of the application before the Rent Controller. It is also alleged that the petitioners/tenants are habitual defaulters, in as much as, they do not pay the rent regularly. They have also not paid the amount of the taxes payable by them. Respondent No. 2 is carrying on his business under the name and style "Amar Furniture". He is running the business

in a rented premises and is paying Rs. 480/to Dharamveer Chhabda towards the rent. It is contended that respondent No. 2 has no other suitable accommodation and he, therefore, requires the suit premises for his bona fide occupation.

3. The petitioners/tenants resisted the applications. They denied that respondent No. 3 is the owner of the premises but they admitted the ownership of respondent No. 2. They also admitted that rent is Rs. 250/per month but denied that they were in arrears of taxes. It is their contention that they were sending the rent to the respondents but respondents refused to accept the rent sent by money order. They admit the decree having been passed but deny the quantum of arrears. They also deny that respondent No. 3 required the suit premises for his bona fide occupation. It is contended that respondent No. 3 is the only son of his father and there are total ten number of shops in the said market. The father and son live in the same house. It is also contended that they have another shop in Nehru Market and they do not require the premises bona fide for their occupation.

4. The Rent Controller found that the petitioners/tenants were in arrears of rent. They were habitual defaulters and respondent No. 3 required the premises for his bona fide occupation. Holding so, the rent Controller granted permission to determine the tenancy. The findings of the Rent Controller were confirmed by the Additional Collector upon an appeal preferred by the present petitioners. Feeling aggrieved thereby, these writ petitions are preferred.

5. I have heard the learned Counsel for the petitioners as well as the respondents.

6. At the outset, my attention was invited by the learned senior counsel Shri Deshpande to the agreement of lease between Dharamveer - the father of respondent No. 3 (husband of respondent Smt. Sheelarani) and the present petitioners. He submits that this leasedeed goes to show that it was Dharamveer who had inducted the petitioners as tenants and therefore, for the purpose of this proceeding Dharamveer is the landlord and the present respondents have no right to file the proceedings. The leasedeed does show that the present petitioners/tenants were inducted by Dharamveer and he is shown as landlord in the said leasedeed.

The learned Counsel for the respondents submits that the petitioners have admitted the ownership of respondent No. 2 in the written statement. The written statement shows that the petitioners admit the ownership of respondent No. 2. Further, it appears that respondent No. 2 had filed suits for recovery of rent against the petitioners and the said suits were decreed. Those decrees are not challenged. Thus, a decree for recovery of rent has been passed in favour of respondent No. 2 and against the petitioners. They have admittedly paid rent to her and have also deposited part of the rent in the civil court. The landlord has been defined as follows in the C.P. and Berar Letting of Premises and Rent Control Order, 1949.

"landlord" includes the person who is receiving or is entitled to receive the rent of a house whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent or be entitled to receive the rent if the house were let to a tenant.

The definition is inclusive and says that landlord is a person who receives rent or is entitled to receive the rent. Therefore, if tenants were paying the rent to respondent No. 2 and also suffered a decree for rent on suit instituted by respondent no2, it must be said that respondent No. 2 is a landlord and it appears from the evidence that the petitioners do not dispute that respondent No. 2 is the landlord.

7. The argument, therefore, of the petitioners in that regard needs to be rejected.

8. This takes to me to consider the submission with regard to habitual default, bona fide requirement and the petitioners being in arrears of rent and not complying the direction of the Rent Controller to pay arrears within fifteen days. The decree directed the petitioner Hamidkhan to pay rent from 01/01/1985 to 31/12/1992. Further rent recoverable, is shown to be from 01/01/1993 to 31/3/1994 and the taxes payable, as agreed. Total rent due as on the date of application before the Rent Controller is Rs. 34,421/-. The pleadings and the decree show that petitioner Hamidkhan was in arrears of rent for more than 6 to 7 years as on the date of application. If oral evidence of Hamidkhan is seen, he admits that he has not paid the decretal amount in full nor has he paid the taxes. Therefore, it appears that the learned Rent Controller while passing an order has directed the petitioner Hamidkhan to pay all the arrears of rent within fifteen days, failing which permission under Clause 13(3)(i) shall be deemed to be granted. Sub Clause (i) of Clause 13(3) reads as follows-

(3) if after hearing the parties the Controller is satisfied,

(i) that on the date of filing the application the tenant was in arrears of rent for any aggregate period of [six months] and that he failed to deposit with the Controller the amount of arrears [along with simple interest at the rate of nine per cent per annum] ordered to be deposited by the Controller within such time as may be fixed by him.

It is apparent that clause is in the form of a relief against forfeiture. Therefore, if tenant wants to avoid permission being granted, he is bound to pay amount as directed by the Rent Controller. There is nothing on record to show that within fifteen days of the order of Rent Controller all arrears were cleared.

9. In petition filed by Jamshid Ahamad Khan, it is clear that he too was in arrears of rent from 1/4/1984 and he too suffered decree for Rs. 30,401/towards arrears of rent. In this case too, the Rent Controller directed the arrears of rent to be paid within fifteen days or else permission shall be deemed to be granted. In this case also nothing is shown that rent has been paid after the order of the Rent Controller. If the arrears are not paid as directed, permission under Clause (i)

must follow. The Additional Collector has, therefore, rightly confirmed the order of Rent Controller in that regard.

10. Now, I turn to consider the question of habitual defaulter. The very nomenclature of the clause suggests that the tenant forms a habit of being regularly irregular in payment of rent. The word habitual default means the tenant consistently pays the rent in an irregular manner in breach of a contract to pay the rent regularly. The tenants are said to be inducted in the premises since 1977. It was, therefore, necessary for the landlord to have shown how and in what manner the tenants have been paying the rent. Further, the law is now well settled that if the landlord is accepting the rent paid irregularly by tenant, such a mode of payment of rent can be deemed to have been accepted by the landlord by way of an acquiescence and he cannot therefore take advantage of his own acquiescence. The landlord does not file any schedule of payment of rent. That would have enabled the court to arrive at a conclusion as to whether tenant was irregular or there was a practice to accept the rent after 34 months. A single instance of not paying the rent for long time would not go to show that the tenant is a habitual defaulter. Therefore, mere filing a suit for recovery of rent necessarily does not go to show that the tenant is a habitual defaulter. A tenant may become a habitual defaulter if he continues to pay the rent irregularly even after a decree is passed against him for arrears of rent. In a decision reported in 1977 Mh.L.J. 447 (A.P. Deshmukh v. Shah Nihal Chand Waghajibhai) following observations are made.

Even after hearing an interesting argument from Mr. Nariman, who appears on behalf of the respondent landlord, we are left in no doubt that the High Court, in spite of several decisions of this Court, has manifestly exceeded the limits of its narrow jurisdiction under Article 227 of the Constitution. We are unable to appreciate that the High Court should have persuaded itself to accept the contention of the landlord in the teeth of the concurrent finding of the Rent Controller and the Collector that the tenant was not a habitual defaulter. Normally, a monthly tenant is under an obligation to pay the rent from month to month but this obligation is subject to a contract to the contrary. Such a contract need not be reflected in a formal document and can be spelt out from the conduct of the parties, spread over a fairly long period of time. The evidence in the case, which was believed by the two tribunals of fact, shows that the tenant has been paying rent at an interval of 3 or 4 months, which the landlord has been willingly accepting and always without even so much as a murmur. The landlord never complained of any irregularity on the part of the tenant in paying rent and indeed the tenant was not in arrears of a paisa when the present proceedings for his eviction were commenced by the landlord.

Therefore, where there is a practice to pay the rent at an interval of 3 to 4 months and landlord accepts the rent without any murmur the tenant does not become a habitual defaulter. Although there are concurrent findings against the tenant, in this regard I find that those findings were based on no evidence and

improper appreciation of the facts and law.

11. This takes me to the ground of bona fide requirement. There are two concurrent findings in favour of the landlord but I find that those findings too are perverse. It is the case of the respondents that respondent No. 3 wants the suit premises for running his business, which he is said to be running from rented premises presently. Thus, the need set up is that of respondent No. 3. He is said to be tenant in the premises owned by his own father Dharamveer. Although it stated that respondent No. 3 is tenant, not a single rent receipt is produced on record. My attention was drawn to the extract of the accounts filed on record by the respondents to show that the rent was paid by respondent No. 3 to his father. Mere extracts of ledger are not enough and a party is required to place along with the extract of ledger the extract of cash book also. Cash book extracts are not placed on record. Further, these extracts of account, which are filed, are of the shop "Amar Furniture" and this shop is admittedly owned by respondent No. 3 himself. What should have been filed is the book of accounts maintained by Dharamveer. They would have shown whether the rent as paid by respondent No. 3 has been credited in his account or not. These extracts of account being that of the tenant of respondent No. 3 himself, there is no question of any account being shown on the credit side towards the rent. In fact, if we peruse the account, there is no entry of debit account in respect of rent in the books of account of respondent No. 3. These extracts are, therefore, of no help and they do not go to show that respondent No. 3 pays rent to Dharamveer.

12. The evidence of Dharamveer - the father of respondent No. 3 shows that respondent No. 3 is in possession of three shops and he has let out one more shop to him which was vacated by one Kadu. Thus, the shop which is said to be let out was one in possession of Kadu but it seems that besides that rented shop respondent No. 3 Amarjit is in possession of three more shops. They are not stated to be let out to Amarjit. It is thus clear that respondent No. 3 Amarjit is in possession of three shops of his own. This fact has been suppressed by the respondents which they should have, in fact, pleaded. Amarjit does not enter the witness box though he is a business man. Inference therefore has to be drawn that had he entered the witness box, he would have been required to admit the possession of his own shops in Chhabda market. It is not pleaded why more number of shops are needed and what kind of business respondent No. 3 is going to start. There is neither pleading nor evidence. This Court in a decision reported in 1987 Mh.L.J.332 (Dwarkadevi Wd/o Jagdishprasad Choudhary v. Narsingdas Rampratap Sharma) observes as follows:

6. In appreciating the findings of the learned reviewing authority, it is necessary to notice the law laid down by this Court under Clause 13(3) (vi) of the Rent Control Order. It is well established that mere desire of the landlord is not enough to prove bona fide need as contemplated under Clause 13(3)(vi). Certain element of necessity must be there and the bona fide need under Clause 13(3) (vi) would mean the bona fide requirement of the suit premises by the landlord.

In re gard to business need it is not only enough to state that the landlord wants to do business, it must be proved also which business he wants to start and the area or space needed for it. He must further prove that he has knowledge and experience and capacity to start the business. If there are vacant premises in possession of the landlord, it must be shown how the said premises are not useful for the business of the landlord, which he wants to start. All these and other considerations must be examined by the Rent Control Authorities in reaching the conclusion under Clause 13(3)(vi) of the Rent Control Order. It is also settled by the decisions of this Court that there must be adequate pleadings upon all these matters in the application filed by the landlord.

Thus, it needs to be proved as to which business he wants to start and the area and space needed for it. In this case, respondent No. 3 was in possession of already four shops. It is not shown and proved that those four shops are insufficient for his business. In the circumstances, in no case it could have been held that the requirement of the respondents was bona fide. In the circumstances, the writ petitions are partly allowed. The permission under Clause 13(3)(i) is confirmed while permission under Clause 13(3)(ii) and (vi) is rejected. No order as to costs.