
(2008) 11 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 2271 of 1997

Jinadas Dhondiappa Mangalwedhekar

APPELLANT

Vs

Shamrao Baburao Kale

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)

Citation : (2009) 1 BomCR 559 : (2009) 2 MhLj 841

Hon'ble Judges : Mohta Anoop V., J

Bench : Single Bench

Advocate : S.D. Kudle, for the Appellant; Manjiri Parasnis, instructed by G.S. Godbole, for the Respondent

Final Decision : Allowed

Judgement

Mohta Anoop V., J.—The petitioner-Landlord has challenged the impugned reversal order dated 3rd October, 1996 passed by the Additional District Judge, Pandharpur whereby allowing the Respondent-tenant's Appeal, in the Judgment and decree passed by the Civil Judge, Junior Division, Pandharpur in Regular Civil Suit No. 393 of 1983, the decree of possession is set aside and the petitioner-plaintiff's suit is dismissed.

2. The alleged facts are:

3. In the year 1983, the petitioner filed a Regular Civil Suit No. 393 of 1983 before Civil Judge, Junior Division at Pandharpur for eviction of the Respondent tenant u/s 13 of Bombay Rent Act.

4. On 31/07/1995, the suit was decreed on the ground of acquisition of suitable alternate accommodation by the Respondent.

5. In the year 1995, the respondent carried an appeal being Regular Civil Appeal No. 84 of 1995 in the Court of the Additional District Judge at Pandharpur.

6. On 28/2/1996, the learned Appellate Court heard the appeal peremptorily

upon an order of the High Court of Bombay for expeditious hearing, the appeal was dismissed.

7. In the year 1996, the respondent challenged the dismissal of the appeal by way of Writ Petition No. 1359 of 1996 before the High Court.

8. On 11/4/1996, the High Court was pleased to remand the matter for fresh hearing in a time bound programme to the Appellate Court.

9. On 3/10/1996, the learned Appellate Court at Pandharpur was pleased to allow the Regular Civil Appeal No. 84 of 1995 and the eviction decree was set aside. Hence, this Petition.

10. The relevant provision is Section 13(1)(I) of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) (for short, "Bombay Rent Act"). The relevant clause is as under:

13(1)(1): that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted to suitable residence.

11. This provision is applicable to the residential premises and not to the business premises. Shankar Bhairoba Vadangekar, since deceased, by his Heirs and Legal Representatives Vs. Ganpati Appa Gatare, since deceased, by his Heirs and Legal Representatives, . The Bombay Rent Act was not made to give protection to those tenants who have the means to either acquiring accommodation by constructing a premises or by taking other premises on rent in other places.

12. Initial burden lies upon the landlord to prove that the tenant has acquired a suitable residential accommodation, that accommodation is not suitable, must be proved by the tenant. Lelavati Vallabhadas and Others Vs. Vijaykumar Narottam Kapadia and Others, . Merely because the tenant acquired alternative suitable accommodation that is not enough to grant the decree. As per the contention of the learned Counsel appearing for the petitioner, Mande D''Penha and Others Vs. Sapal Farmroze Printers since deceased through his L.Rs. Miss Parvez Printer and Others, does also not necessary that the alternative accommodation must be in the same locality.

13. The learned Counsel appearing for the respondent further submitted that the word "suitable" need to be considered and need to be interpreted, to mean suitable to the tenant and all the members of his including reasons, needs of the tenant and his family. The emphasis is on the word ""Suitable" and not acquisition of a particular accommodation by the tenant. (Prabhakar Raghunath Dixit v. B.S. Kothare) 76 Bom.L.R. 240.

14. The test of acquisition of suitable alternative accommodation by the tenant is for benefit of tenant and not for benefit of tenant's son. Mrs.Saharabegam Sikandar Shaikh and another Vs. Abdul Ali Mawaji Tejani and another, .

15. In the case in hand, the relevant facts and reasonings are recorded in Para 7-

E which is as under:

7-E. It is not challenged the defendant secured suit premises on rent in the year 1970 for his family. It is specifically claimed and pleaded by the defendant at that time, his son Suryakant was 13 years old. Chandrakant was 7 years old and Shrikant was five years old. The Plaintiffs witness specifically claimed the entire family resided upto 1992 in the suit property. He specifically admitted marriage of Suryakant was performed in the year 1978, marriage of Chandrakant was in the year 1989. However, assigned his inability to state whether marriage of Shrikant was performed in the year 1992. He further admitted Suryakant has two issues. Chandrakant has two issues. However, gave his inability to state whether Shrikant is having one son. The tenant has claimed Suryakant's son Vikrant is 15 years old. Ramakant is 12 years old. Shrikant has one son. On perusal of the cross examination the landlord has not challenged their ages. Thus, the claim of tenant proved beyond reasonable doubt that when he secured suit premises on rent, at that time, there were only five members in his family and out of it three were minors. It is further proved three minor sons became major and their marriages were celebrated and they begot five children. And where there was one unit of the family it is multiplied in four units.

16. The tenant-respondent, therefore, claimed and proved that the suit premises is insufficient, therefore, purchased a plot to accommodate two sub-units of the Joint Family namely of Suryakant and Shrikant. The tenant-respondent, therefore, has means as already acquired a plot and built the rooms which are alleged to be for two married sons. There is no dispute that the family are bound to increase and therefore, if this section to means if interpreted on the basis of multiplied or increased family of tenant then, the landlord will not be in a position at any point of time, to get possession of the tenant though the tenant has clear suitable residential accommodation. Here is a case where the tenant-respondent has admittedly acquired the alternative accommodation for the residence and he could have shifted himself in the said premises alongwith his family, but instead shifted his sons. The person who is in position to purchase a plot but built only three rooms which is less in the area to the suit property, the observation that the landlord has failed to prove that the respondent tenant has no capacity to built any extension to it or any other further carpet area is available to the tenant is not correct.

17. Once it is proved that the tenant has built, acquired vacant possession or being allotted a suitable residence, in my view, merely because the newly acquired premises is not sufficient to accommodate him and his dependents cannot be the reason to deprive the landlord to take possession as proved under the Bombay Rent Act. Anandi D. Jadhav (Dead) By Lrs. Vs. Nirmala Ramachandra Kore and Others, . On this, such situation is not contemplated under the Rent Act to give exact meaning of the words "suitable residence". We have to consider the scheme and object of the Rent Act which are in the interest of both. We cannot overlook the basic facet including aim and object of the rent Act, that it is

intended to provide the shelter to a person/tenant who have no premises to reside because of the shortage of accommodation. But having once acquired a suitable residence of comparatively of equal size, equally situated location, equally with all facilities in the same town. To accommodate tenant's large and developing family cannot be the reason to make the said provisions illusory, for the landlord, depriving of his right to take back the possession once tenant has acquired the suitable residential accommodation. This cannot be the ground to deprive the landlord to take a possession of the property as he is not under obligation to accommodate the developing family of the tenant. There is no question of considering theory of comparative hardship in such cases. The landlord will never get possession of the premises in view of developing/growing family of the tenant under this section. There is no dispute that tenant has total control and domain over the property which is newly acquired, which he can reasonably and alternatively use if as the substituted place B.R. Mehta Vs. Atma Devi and Others, . Here, admittedly the tenant has contributed and owned the property in question and not by other members of the family. He has acquired the plot and built residential structure but accommodated his family members.

18. In *Monde D'penha* (supra) this Court has observed the decree of eviction is inevitable on this ground u/s 13(1)(I) of the Bombay Rent Act. There is a material that the tenant has acquired the alternative residential premises. The Court further observed that, "the fact that the tenants acquired those premises and had no intention to occupy the same would be of no avail. The law postulates that after coming into force of the Act if the tenant acquires suitable alternative residence that by itself is a ground for terminating the tenancy and entitling the landlord to secure possession of the demised premises from the tenant."

19. Therefore, taking all this into account, the impugned order dated 3/10/1996 passed by the District Judge, Pandharpur is quashed and set aside. The Judgment and decree dated 31/07/1995, passed by the learned Joint Civil Judge, Junior Division, Pandharpur in Regular Civil Suit No. 393 of 1983 is restored.

20. The Petition is allowed in terms of prayer Causes (a) and (b). The learned Counsel appearing for the respondent seeks stay of the Judgment. Considering the reversal order passed by this Court, the effect and operation of the Judgment is stayed for eight weeks from today.