
(2000) 04 MP CK 0071
In the Madhya Pradesh High Court
Case No : First Appeal No. 131 of 1997

Kailash Chandra Trivedi

APPELLANT

Vs

Punjab National Bank Ltd. and Others

RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)

Citation : (2000) 2 JLJ 379 : (2000) 3 MPLJ 343

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : A.M. Mathur and S.I. Jain, for the Appellant; M.I. Dhupar and Pramod Meetha, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.

Appellant has claimed possession of the premises admeasuring 2580 sq. ft. area in possession of the Respondents situated on Maharani Road (hereinafter referred to as "the suit premises" for convenience). He averred that the Appellant is having the Joint Hindu Family consisting of himself, his mother, wife, two sons and two daughters. He averred that all these members have a join Hindu Family running a business as well as he himself, his wife, sons engaged in business independently also. According to his averment his son Sunil Trivedi is running a business under the style "Bharat Timber Trading Company". Other son Sanjay is running a steel business under the style "Sanjay Steel". His wife Chandrabala Trivedi is having partnership firm with Kailash Gupta under Style "Kailash & Kailash".

According to the averments of the Plaintiff-Appellant he does not have proper place for having the offices and that is the case also with other family member. Therefore, all the family members have scattered offices. It is the averment of the Appellant that they all want to come together in one building so as to make

them convenient to go for trade and, therefore, the suit premises in possession of Respondents are being genuinely and bonafidely required by him for his bona fide need.

Appellant pointed out that he entered with the Respondents into an agreement in respect of the tenancy of the suit premises on 1.5.1971 which was for a specific period and was to end by 30.4.86. The said tenancy ended by the end of 30.4.86 and thereafter it was not renewed by the Respondents. Therefore, he directed the Respondents to hand over the vacant possession of that suit premises by issuing suit notice Ex. P/I dated 25.5.86 which was replied to by the Respondents by their reply dated 14/25 June, 1986. Again there was exchange of notices in context with the initial suit notice. Lastly, the suit came to be filed in the Court on 13.1.87. Written statement was filed by Respondents on 18.6.87. The issues were framed which revolved around the said bona fide need of the Appellant for opening his offices in the suit premises. Additional issue also indicated that whether the area handed over in vacant possession of the Appellant by Bank of India was sufficient enough to make good the said requirement of the Appellant.

The 2nd Additional District Judge, Indore, by his judgment dated 24.1.97 answered the issues by holding that the Appellant, his wife and adult sons did not require the suit-premises for their bona fide. need. He also held that there was no alternative accommodation available to the Appellant for completing his said need in Indore city. He held that on 30.4.86 the tenancy between the Appellant and Respondents did not automatically extinguished. He also held that the area which has been handed over in vacant possession to the Appellant by Bank of India was sufficient enough to make good the said requirement of the Appellant and that judgment and decree has been put to challenge by this appeal by the Appellant.

So far as the termination of tenancy is concerned, it appears from the judgment of the trial Court that said point was not contesting though an issue was framed. The contest between the parties was on two points only and those two points were (i) whether there is alternative accommodation available to the Appellant in Indore to start his business and (ii) whether the need is bona fide and genuine. The trial Court held that the Appellant did not have any alternative accommodation in Indore to start the business. However, he held that the need expressed by the Appellant in the suit was not genuine and bona fide. While discussing these two issues he expressed that the portion of the premises handed over to the Appellant in vacant condition by Bank of India was sufficient enough to start his business in it.

The Appellant has examined himself and his son Sunil to prove his case and the Respondents examined Ashok Kumar Sethi, the Bank Manager, to prove the case of the Respondents. Both Appellant and his son Sunil described as to how Appellant Kailash Trivedi, Sunil, Sanjay and wife of Kailash Trivedi are having different business and are carrying on the business in different place. The witnesses of Respondents Ashokkumar Sethi produced the map from Municipal

Corporation for showing that the Appellant is owning a premises near Navlakha. The learned trial Judge has considered this evidence in his judgment. His conclusions mainly have been mentioned in above paragraphs. However, the entire judgment will have to be examined in view of the judgments cited by the learned Counsel for litigants and in view of their submissions.

Shri Mathur placed reliance on following judgments:

Sitaram and Anr. v. Ramkumar and Anr. 1978 (1) MPWN 490 where the Single Bench of this Court held that what is required to be established by the Plaintiff in a suit u/s 12(1)(f) of the Act is that he wants the suit premises for starting his business. What is further required is that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned. The alternative accommodation suggested was a passage to the bathroom which the learned lower appellate Court has found as a fact that it could not be said to be an alternative accommodation which can be used for the purposes of a shop. Apparently therefore, there is no alternative suitable non-residential accommodation in possession of the Appellant landlord in the town.

As regards the requirement of the Plaintiffs the learned lower appellate Court set-aside the conclusion of the trial Court on the ground that the place where his shop is situated is not the normal place of business where gold and silver ornaments are sold. But as the Plaintiff in his statement stated that this shop is situated opposite to the "Haat-Maidan" and therefore, the customers from rural areas could be attracted to this place, the learned judge felt that if the Plaintiff wants to entertain customers from the rural area then he should do so in his village shop itself. Such a reasoning is not justified. The Plaintiff is the best judge where he should carry on his business and it could not be said that this place is not suitable for his business.

Another ground on the basis of which the learned judge interfered with the decision of the trial Court is that there is yet another shop in the same house admittedly in possession of a tenant against whom also a suit for eviction has been filed and the Plaintiff Sitaram according to the learned judge it was admitted in cross-examination that this shop he wanted to get vacated for starting the business of his another son. The learned judge, therefore, felt that this portion is not available for Chandmal was not alleged in the plaint. But it appears that the learned judge of the lower appellate Court forgot that what is necessary to allege is that there is no other suitable non-residential accommodation in possession of the Plaintiff in the town. If it is in possession of a tenant and a suit for eviction is filed it could not be said that it is in possession of the Plaintiff and, therefore, on this ground also the decree passed by the trial Court could not be interfered with.

Shri Mathur also placed reliance on a decision of Single Bench of this Court in the matter of Noor Mohammad v. Murlidhar 1985 MPWN 435 wherein this Court held that when the Plaintiff stated that he requires the tenanted accommodation for

starting the business of Mohammad Iqbal because it is situate on the main road and the shop in house No. 65 Kabutarkhana are situate on a side street and Mohammad Iqbal cannot start his business in those shops.

If the Plaintiffs' son wants to start a new business he would naturally like to start it at a prominent place and not at a place situate on a side street. If the Plaintiff wants to start the business of his son in the tenanted accommodation (suit premises) in preference to the accommodation situate in Kabutarkhana on the ground that the tenanted accommodation which is situate on the main road is more suitable for starting the business of his son, the Plaintiffs option cannot be held to be unreasonable.

Shri Mathur again placed reliance on a judgment of the Supreme Court in the matter of Meenal Eknath Kshirsagar (Mrs) v. Traders & Agencies and Anr. 1996 5 SCC 344; where the Supreme Court held that it is for the landlord to decide how and in what manner he should live and he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient it is not for the Courts to dictate to him to continue to occupy such premises.

It is to be noted that this case is in addition to another case which has been cited by Shri Mathur i.e. Prativa Devi (Smt.) v. T.V. Krishnan 1996 5 SCC 353. It is also further important to note that the judgment of Supreme Court in Meenal Eknath Kshirsagar (supra) is revolving around the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Bombay Rent Control Act" for convenience) and the provisions are stricter and leaning more towards the tenant than the landlord. Shri Mathur placed reliance on a judgment of the Supreme Court in the matter of Prativa Devi (Smt) v. T.V. Krishnan (supra) wherein the Supreme Court held that the landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court was rather solicitous about the age of the Appellant and thought that because of her age she needed to be looked after. That was a lookout of the Appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for. There is nothing to show that she had any kind of right whatever to stay in the house of the family friend. On the other hand, she was there merely by sufferance. There is no law which deprives the landlord of the beneficial enjoyment of his property. The High Court was in error in laying down that the test of availability of alternative accommodation and not the legal right to such occupation in adjudging the bona fides of the claim of the landlord u/s 14(1)(e) of Delhi Rent Control Act, 1958.

Shri M.L. Dhupar placed reliance on the judgment of Supreme Court in the matter of Sarvate T.B. v. Nemichand reported in 1965 JLJ 973 :1966 MPLJ (SC) 26 wherein the Supreme Court held that the burden of proving that landlord

genuinely requires non-residential accommodation within the meaning of Section 4(h) lies upon the landlord. A mere assertion by the landlord that he requires for his use the premises in occupation of his tenant raises no presumption that he genuinely requires the premises for his use. It will be a question of fact in each case whether the onus has been discharged and a finding on this question being one of fact cannot be interfered with in second appeal.

He also placed reliance on the judgment of the Supreme Court in the matter of D.N. Sanghavi and Sons Vs. Ambalal Tribhuwan Das, ; wherein the Supreme Court held that merely because the landlord required the accommodation for his partnership-business did not fulfil the conditions of Section 12(1)(f). If the deed of partnership, which had not been produced, had excluded him expressly or impliedly from the management of firm's business and had made him a sleeping partner, it could not be said that the accommodation was needed directly and substantially for his occupation by way of business.

Shri Dhupar also placed reliance on the decision Mattulal Vs. Radhe Lal, ; wherein the Supreme Court held that the finding reached by the Additional District Judge, the first appellate Court, on an appreciation of evidence that the landlord does not bona fide require the premises in question for the purpose of starting business as a dealer in iron and steel materials is a finding of fact and not a finding of mixed law and fact and it cannot be interfered with by the High Court in second appeal unless it is shown that in reaching it, a mistake of law is committed by the Additional District Judge or it is based on no evidence or is such as no reasonable man can reach to such conclusion. Mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the Court to determine the truth of the assertion and also whether it is bona fide. The test which has to be applied is an objective test and not a subjective one. The word "required" signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show that. The burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business. Where the Additional District Judge did not misdirect himself in regard to these matters, as for example, by misconstruing the word "required" or by erroneously placing the burden of proof on the tenant and no error of law was committed by him in arriving at the finding of fact in regard to the question of bona fide requirement of the landlord, the High Court could not in second appeal interfere with that finding of fact.

He placed reliance on the judgment of the Supreme Court in the matter of S.J. Ebenezer Vs. Velayudhan and Others, ; wherein the Supreme Court held that mere desire of landlord is not sufficient to constitute bona fide need. The desire is to be tested objectively and the burden also lies upon the landlord to establish that he genuinely required the accommodation.

Both Shri A.M. Mathur and Shri Dhupar, vehemently made the submissions for

their clients. In view of the submissions and the observations of the Supreme Court and this Court it will have to be seen whether the learned Additional Distt. Judge has rightly appreciated the evidence on record and whether the conclusions drawn by him in-respect of judging the bona fide need of the Appellant happens to be correct, proper and legal or otherwise.

It is true that the burden is on the landlord to prove that his need to get the vacant possession of the suit premises is bona fide, and genuine. The mere desire of the landlord would not entitle him to get the decree. It is true that his desire is to be tested by the Court by using the touch stone of reasonability. But as it has been pointed by the Supreme Court in the matter of Meenal Eknath Kshirsagar (supra) and Prativudevi (supra) the landlord cannot be deprived of rising his property as he wants for starting a business in comfortable way. The observations of Supreme Court and the M.P. High Court in the judgments cited by Shri M.I. Dhupar were from the decisions of Second Appeals. The criteria laid down for deciding the second appeals is quite different from the criteria which is to be adopted in deciding the first appeal. In first appeal the High Court acts as the last Court of facts but that is not so in context with second appeals. In the first appeal, High Court has to appreciate the evidence also which has been adduced by the parties in support of rival contentions in view of the evidence on record. The High Court has to test whether the trial judge was right in drawing the conclusions. It is for the High Court to test the correctness, propriety and legality of the conclusions drawn by the Court in the case. In the second appeal the High Court is having the advantage of being equipped by the finding of facts recorded by the trial Court and, thereafter by the first appellate Court (The District Court.) Therefore, the ratio of the judgments cited by Shri M.I. Dhupar would not be of much use to him so far as the present matter is concerned, because it is needless to point out that the legal precedents are to be applied to the cases keeping in view the different set of the facts and circumstances of the cases. Every case has got a different set of facts and circumstances. In rare cases they are similar.

In the present case Appellant Kailash Trivedi has examined himself and his son Sunil also. It has come in their evidence abundantly and clearly that Kailash Trivedi, his wife, Sunil and Sanjay are having different commercial concerns. Their offices are situated at various places. Mrs. Trivedi is having her office of business of partnership in the house of Shri Gupta, another partner. One office is situated in ancestral house. When that is so, it cannot be said to be unreasonable that the said family members may have a bona fide need to have all the offices near each other in one building. That is always beneficial to them and that would be enabling them to have good communication between them as well as that would be also comfortable for them to have their family life in comfortable way. It is not proper that when suitable accommodation is available in the possession of the tenant, such family members should be required to house the office of commercial concerns in their residential house. It is neither healthy nor socially proper to have such offices at home if a person from commercial world wants to

deal with his business properly and efficiently. The learned Judge has pointed out in his judgment that the premises available with the family members in old Kasera Bakhal is suitable to have the office of commercial concerns because one Gauri Tiles is having its office in the said vicinity. He has also come to the conclusion that as there are small 50 shops in the vicinity, the Appellant should have the office in the same locality. This is totally improper approach adopted by the trial Court while appreciating the evidence on record. He has not informed himself properly about the spirit of the enactment and the view taken by the Supreme Court upholding the right of the landlord "to enjoy his property in comfortable way as per his desire. The Court is not to impose its view on the landlord when suitable accommodation is available in possession of the tenant and no alternative accommodation is available to fulfil such need of the landlord in the same city.

The learned trial Judge has rightly held that no alternative accommodation is available to the Appellant to have his office at any place in Indore. He has rightly held that the Respondent failed to prove that he is having such alternative accommodation available for housing his different offices. When that was so, how the learned trial Judge was justified in coming to the conclusion that the vacant area which has been vacated by Bank of India in the same building was sufficient to house all such offices of the Appellant's family in it? The learned Judge was totally wrong in coming to that conclusion.

Old Kasera Bakhal by itself shows that it is in old locality. Sanjay is having his steel Industry and the business is mainly a business of commission agent. He would be definitely needing a modern or semi-modern locality for having his commission agency business. The business of Bharat Timber Man cannot be also restricted to the area where saw machines are functioning. It is true that the small office is generally located there.

But that is not for completing the need of such business when such trade requires other amenities like funds, advertisement, etc. It is but natural for the wife of the Appellant to have her own office in a different situation and in different place. For how long, she can function from the office which is situated in the residential house of her partner Shri Gupta? That would be embarrassing for a lady to function in such office. Unfortunately, the learned trial Judge has not properly understood the difficulty of a lady entrepreneur.

The evidence which has been adduced by the Appellant has to be properly understood and it is to be weighed in view of the needs expressed by the Appellant. It is to be appreciated. Word "appreciate" always means that it is to be understood by keeping oneself in reasonable thinking position. The things are to be understood by informing oneself about the need which has been expressed by landlord. Every need expressed by the landlord is not to be doubted and is not to be looked with suspicion. It has to be kept in mind that every landlord has a reasonable right to enjoy his property for functioning comfortably in his business. It automatically means that unreasonable, fanciful, imaginary need put forth by

the landlord would not be a ground for evicting the tenant. But equally, if the need which has been put forth by the landlord is found reasonable, that is not to be thrown out as if it is an instrument for evicting the tenant.

Thus, summing up all I come to the conclusion that the learned trial Judge has committed error in appreciating the evidence on record and, therefore, he landed in error in coming to the conclusion that the need in present matter which has been expressed by the Appellant is not bona fide and sufficient enough to evict the Respondents from the suit premises. In the result the judgment and decree which has been passed by him and which has been assailed by this appeal needs to be set-aside.

Thus, the suit of the Appellant-Plaintiff is hereby stands decreed with cost and this appeal stands allowed with cost. Keeping in view that the Respondent is a nationalised Bank, six months' time is granted to vacate the suit premises.