

(2006) 02 BOM CK 0072

In the Bombay High Court

Case No : Writ Petition No. 1775 of 2001

Kamala Shivcharan Khairkar and Others

APPELLANT

Vs

Chandrabhagabai and Another

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Citation : (2006) 4 BomCR 861

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : A. Bandre, for the Appellant; P.D. Sathe, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari B.P., J.—Heard Shri Bandre, learned Counsel for the petitioners and Shri Sathe, learned Counsel for the respondents.

2. The challenge is to the order of Rent Controller dated 7.6.1993 granting permission to present respondents to terminate tenancy of petitioners under Clause 13(3)(vi) of C.P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as Rent Control Order). The said order of Rent Controller was challenged by the petitioners in appeal under Clause 21 of Rent Control Order and the Appellate Authority has on 22.2.2001 dismissed that appeal.

3. The premises in question are about 90 sq. ft. and located at Abhyankar Nagar, Road in Dhantoli area. The premises appear to be a structure which is being used for running a Saloon shop by petitioner No. 2. Jaiwant. The premises were let out to father of petitioner No. 2 by name Shri Shivcharan by husband of Respondent No. 1 and father of Respondent No. 2. Durjan. The said Durjan. initiated proceedings and sought permission. under Clause 13(3)(vi), (ix) and (iv) of Rent Control Order, to terminate the tenancy of petitioners. He contended that he was working in a Mill and after retirement, he wanted to start Cycle Repairing Shop and his grand son by name Dilip would assist him. The said application was

opposed by present petitioners. During the pendency of these proceedings, Durjan died and therefore his widow i.e. present Respondent No. 1 and his only daughter i.e. present respondent No.2 were substituted on record as his legal heirs. They have prosecuted the matter further. As already stated above, Rent Controller granted permission only under Clause 13(3)(vi) of Rent Control Order i.e. for need and it is maintained by the Appellate Authority.

4. Shri Bandre, learned Counsel for the petitioners contended that the need pleaded was of deceased Durjan and after his death, that need was extinguished. He further contended that respondent No. 2 is married daughter residing at Gitti Khadan and her son Dilip or other son Prakash are not residing in Dhantoli. He contended that therefore need of suit premises for their purpose was not the need of landlord. He contended that neither widow of landlord i.e. present respondent No. 1 nor any of these sons i.e. either Dilip or Prakash have entered the witness box. He states that thus there is absolutely no evidence on record to show that after the death of Durjan, these grand sons wanted to start any Cycle Repairing Shop as alleged by the legal heirs of deceased Durjan. He further states that even the premises in possession of landlady i.e. Respondent No. 1 are sufficient and Cycle Repairing Shop could have been started in that premises but that has not been considered by the Rent Controller or by the Appellate Authority. He further states that even the capacity of these sons to start such business has not been established.

5. To demonstrate the obligations of the Rent Control authorities while considering the application under Clause 13(3)(vi) of Rent Control Order, he relies upon the judgment of the Hon''ble Apex Court in the case of Dwarkadevi v. Narsingdas reported at 1987 Mh.L.J. 332 particularly para 7. He further states that death of Durjan and the need of grand sons is a subsequent event and the Hon''ble Apex Court has laid down certain procedures through which such subsequent events can be placed before the Rent Control authorities. To demonstrate this, he relies upon the judgment of the Hon''ble Apex Court in the case of Ramesh Kumar Vs. Kesho Ram, . According to him, therefore, there is an error apparent on the face of record and the impugned orders are unsustainable.

6. Shri Sathe, learned Counsel for the respondents, on the other hand, contends that the original landlord Durjan was himself needing the suit premises for starting cycle repairing shop and he also disclosed that his grand son Dilip would be assisting him in that business. He states that thus death of Durjan has not made any difference. He further points out that Durjan and his widow Chandrabhagabai have only one daughter and the need of said daughter's son is therefore bona fide need of Durjan or Chandrabhagabai also. He further argues that after death of Durjan his daughter also has share in the property and therefore her need is also considered by the authorities below. He contends that need to establish son in business is therefore made out and the Courts below have taken correct view of the matter accordingly. He further states that in any case the relevant date for adjudicating the need is the date on which the

application was filed by Durjan and in support, he places reliance upon the judgment of the Hon''ble Apex Court in the case of Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LR''s., .

7. After hearing both the Counsels, I find that the arguments advanced are considered by the Rent Controller as also by the Appellate Authority. Shri Bandre, learned Counsel for the petitioners by taking pains invited attention of this Court to the entire evidence laid by the parties before the Court. From the pleadings and evidence, it appears that deceased Durjan retired from Model Mill and thereafter wanted to start his own Cycle repairing shop in the tenanted premises. He has expressly mentioned that his grand son Dilip i.e. daughter''s son would be assisting him in said business. This pleading is already on record and the present petitioners had opportunity to meet it before the Rent Controller. Thereafter, the evidence was laid by the parties after death of Durjan before the Rent Controller and the need of sons of respondent No. 2 daughter was pointed out in it. The said need is examined by the Rent Controller as also by the appellate authority. The fact that husband of daughter of Durjan is residing at Gitti Khadan is not in dispute. It has also been brought on record that said husband is also having its cycle repairing shop at Gitti Khadan. In such circumstances, it cannot be said that the sons of daughter i.e. respondent No.2 cannot start cycle repairing shop in the suit premises. The contention of the petitioners that their capacity to run a cycle repairing shop has not been established is not relevant because it is settled law that such capacity or ability is not relevant to determine the bona fides or otherwise of the landlord. Particularly after considering the back ground from which the said sons have come, I find nothing wrong in the permission granted by the Rent Controller and maintained by the Appellate Authority.

8. The reliance upon the judgment of this Court reported at 1987 Mh.L.J. 332 particularly on para 7 is not warranted. The necessary pleadings were already there and the petitioners got opportunity to test those pleadings while cross-examining respondent No. 2 daughter. Similarly the need of grand son is not subsequent event because it was already pleaded. The judgment of the Hon''ble Apex Court relied upon by Shri Bandre, learned Counsel for the petitioners has got no relevance.

9. The learned Counsel for the respondents has placed reliance upon the judgment of the Hon''ble Apex Court to state that the relevant date is the date on which the application was presented by the deceased Durjan and his subsequent death therefore cannot be treated to hold that need as pleaded by him is extinguished. I do not find it necessary to go into more details in it because the deceased Durjan himself has pleaded that premises were needed by him to start cycle repairing shop and his grand son Dilip was to assist him in the business. Thus, the approach of the authorities below cannot be stated to be perverse.

10. There is no jurisdictional error or error apparent in the orders passed by the Courts below. No case is made out for interference in concurrent findings reached

by the courts below. Writ Petition is dismissed. Rule is discharged. There shall be no order as to costs.