
(2015) 04 BOM CK 0278
In the Bombay High Court
Case No : Writ Petition No. 825 of 1996

Nalinibai Jaywantrao Shinde	Vs	APPELLANT
Chandrakant Vithal Chhalare and Others		RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Citation : (2015) 04 BOM CK 0278

Hon'ble Judges : N.M. Jamdar, J

Bench : Single Bench

Advocate : P.B. Shah, for the Appellant; P.N. Joshi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N.M. Jamdar, J.

1. By this petition, the Petitioner landlord challenges the Judgment and Decree dated 27 September 1995 passed by learned District Judge Nasik, in Civil Application No. 2 of 1990 allowing the appeal filed by Respondents/tenants and setting aside the Judgment and Decree passed by the Civil Judge (J.D) Sinnar dated 17 November 1989, directing eviction of the Respondents/tenants from the suit property.

2. The property bearing No. 4808A which is owned by the Petitioner was purchased by the Petitioner on 21 November 1983. The Respondents/tenants reside in one room admeasuring 18 ft. x 15 ft. The Petitioner filed the suit against the Respondents for eviction bearing Civil Suit No. 253 of 1985. The suit was filed on the ground that the Respondents have become defaulters as they have not paid rent from 1 December 1983 to 31 May 1985. It was alleged that the Petitioner was residing in a rented house and she bonafide required the suit premises for her personal occupation. It was further alleged that the Respondents were causing nuisance by not keeping suit premises in good condition. The Respondents filed their Written statement and denied the contentions. It was contended that the rent is Rs. 8/- per month and Rs. 5/- per

month were the electrical charges and since there was no electricity, Rs. 8/- was the monthly rent. It was also contended by the Respondents that the Petitioner with full knowledge that the property was tenanted, had purchased the same, and she was not in need of the premises. The Respondents also filed an application for fixation of standard rent which was fixed at Rs. 8/-.

3. The learned Civil Judge (J.D) framed issues, and considered the evidence on record. The learned Civil Judge negated the ground of default pressed into service by the Petitioner. The learned Civil Judge held that the standard rent was Rs. 8/- but the demand was of Rs. 45/-. The rent which was paid by the Respondents was withdrawn by the Petitioner and also that the money orders sent by the Respondents were refused by the Petitioner. The learned Civil Judge however, decreed the suit on the ground of bonafide requirement, since the learned Civil Judge came to the conclusion that Petitioner had no other premises and was living in rental premises. The learned Civil Judge held that since the Respondents were anyway living in rental premises they could always find another rental premises and the greater hardship would be caused to the Petitioner, if decree was refused. Accordingly, the learned Civil Judge decreed the suit vide Judgment and Decree dated 17 November 1989.

4. The Respondents thereafter filed an appeal bearing No. 2 of 1990 in District Court, Nasik. The Petitioner did not file any cross-objection against the finding that there was no default committed by the Respondents in payment of rent. In the District Court, the Respondents placed on record that the Petitioner had acquired vacant possession of one room in the very premises which was occupied by one Dilip Madhav Masalkar an another tenant. The Petitioner initially denied this fact but admitted that possession of one room from said Shri Masalkar was received. The learned District Judge also took into consideration the other properties in respect of the Petitioner's husband and son and held that the decree passed by the learned Civil Judge, on the ground of bonafide requirement needed to be interfered. Accordingly, by Judgment and Order dated 27 September 1995, the learned District Judge allowed the appeal. Thereafter this petition.

5. The first question is regarding bonafide requirement and comparative hardship. The suit was instituted in the year 1985, within two years of the Petitioner purchasing the property. The Petitioner has admitted that Petitioner was fully aware that it was a tenanted property. The suit premises has four other tenants other than the Respondents. The suit was filed on simplistic basis that Petitioner does not have any other premises and she has to live in rented premises. The learned trial Judge considered these facts and granted the decree. However, when the appeal was heard by the learned District Judge, one room in the same premises became available to the Petitioner. It was also brought on record that the Petitioner was serving as a teacher in Zilla Parishad. Her husband was working in government printing press which provides government quarters to it's employees. The fact that the Petitioner's son has an independent house of

his own was also brought on record. Considering these properties available to the Petitioner and the fact that additional new room became available to the Petitioner, the equitable balance between the bonafide requirement and comparative hardship of both the parties underwent a change. The case of the Petitioner was that the Petitioner and her family has no other premises. It is on record that the son has an independent house and also that she has a room in the same premises. The need of the Petitioner is not bonafide.

6. It cannot be disputed that there will be hardship to the Respondents if the decree of eviction is passed. Admittedly, the Respondents do not have any other premises. Comparative hardship was held in favour of the Petitioner by the trial Court on the ground that there was no other property available to the Petitioner but as stated earlier, similar area is now available to the Petitioner. The appeal Court therefore, was not in error in noticing this change in position and setting aside the decree on the ground of bonafide requirement.

7. The learned counsel for the Petitioner, Mr. Shah submitted that the room which was received by the Petitioner from Shri Masalkar is not in habitable condition. The Petitioner has filed photographs in this petition. The events which are sought to be brought on record by affidavit are not subsequent events but an explanation as to why the premises available cannot be taken into consideration. The Petitioner had to be confronted with the fact that room has been made available to her, before she accepted the position. In any case the photographs which are placed on record are of the year 2012. From these photographs it cannot be said that this was the condition in the year 1994 when the room was available. It could be that the Petitioner does not need the premises and allowed it to fall under disuse. If the Petitioner has allowed to fall the premises available in disuse, it could seriously reflect on the need of the Petitioner.

8. Mr. Shah, then submitted that the Appellate Court was in error in holding that since the Petitioner had not filed any cross-objections the Petitioner cannot agitate the issue of default which was allowed against the Petitioner by the learned Civil Judge. Since the proceedings are pending since the year 1985, I have considered the argument of Mr. Shah as regards default on merits, so as to consider whether there is any prima facie case so as to remand the proceedings. The learned trial Court has clearly recorded that inspite of the standard rent being of Rs. 8/- demand was made of Rs. 45/- and the Respondents have paid the rent at the rate of Rs. 8/- which the Petitioner has withdrawn. The Petitioner has refused the money orders and the receipts of refusal are placed on record at Exhibit No. 49 to Exhibit No. 53. These facts are established. If the landlord has refused to accept the money orders in respect of rent, it cannot be said that the Respondents / tenants were not ready and willing to pay the rent. Nothing is shown to dislodge the finding of trial Court or how it is incorrect. In view of this clear and unequivocal material in respect of ground of default available on record and that there is hardly any argument as to how the finding is bad there will be no purpose served by remanding the proceedings to the Appellate Court except

to drag on the litigation further. Considering the overall circumstances and the nature of jurisdiction to be exercised, no case is made out for interference.

9. Writ petition is accordingly dismissed. Rule discharged. No order as to costs.