
(2014) 06 BOM CK 0104

In the Bombay High Court

Case No : Writ Petition No. 1015 of 2001 and Civil Application No. 3436 of 2001

Natwarlal Dahyabhai Shah

APPELLANT

Vs

Jadaobai

RESPONDENT

Date of Decision : 10-06-2014

Acts Referred:

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

Citation : (2014) 4 ABR 552 : (2014) 6 ALLMR 610 : (2014) 5 BomCR 675 :
(2015) 1 MhLj 365

Hon'ble Judges : N.W. Sambre, J

Bench : Single Bench

Advocate : S.P. Shah, Advocate holding for Mr. Girish Rane, Advocate for the Appellant; V.D. Sonawane, Advocate holding for Mr. S.P. Brahme, Advocate for Respondent No. 1A, Advocate for the Respondent

Judgement

N.W. Sambre, J.—Heard respective Counsel. The present petitioner-tenant has questioned the order passed by the Courts below in granting decree for eviction and possession in favour of the landlady/her legal heirs under the clause "bonafide need" as contemplated u/s 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947). Hereinafter shall be referred to as "Rent Act".

2. From the record it appears that Regular Civil Suit No. 81 of 1988 came to be filed by one Smt. Jadaobai w/o Mishrimal Lalwani on 06/06/1988 against the present respondents praying therein possession of the property consisting of a shop admeasuring 15 x 30 ft. constructed on C.T.S. No. 435/B and 436/B having Municipal House No. 1278 within jurisdiction of Nandurbar Municipal Council, which is locally identified the said property as "Hat Darwaja Bazar".

3. The property in question was rented out to respondent on monthly rent of Rs. 40/- per month.

4. In the proceedings initiated before the learned Civil Judge, Junior Division, the

landlady canvassed bonafide requirement for her own and her husband, as according to landlady, she is staying alongwith her husband, her mother. She further averred that she intent to establish business in the said premises and as such, sought decree for the possession of the property in question. The claim of the landlady was objected by the petitioner by filing written statement. The petitioner submitted that bonafide need as canvassed by the landlady is not genuine. He submitted that the husband of the landlady is engaged in the business of Savkari/money lending and in relation to other premises in the said building, the landlady has sought possession on the similar ground.

5. The learned Court of the Civil Judge, Junior Division, Nandurbar granted decree in favour of the landlady which was subject matter of the Civil Appeal No. 71 of 1995 before the Court of the Additional District Judge, Nandurbar. The learned Additional District Judge, Nandurbar passed its judgment on 26/02/2001 upholding judgment of the trial Court ordering grant of possession of the property in question to the landlady, u/s 13(1)(g) of the Rent Act.

6. Being aggrieved thereby present petition.

The petitioner-tenant submits that the suit of the landlady was decreed by the judgment and decree dated 11/08/1995 wherein the learned Joint Civil Judge, Junior Division, Nandurbar ordered the recovery of possession of the suit premises to the plaintiff from the defendant. The defendant was directed to deliver the vacant possession of the suit premises to the plaintiff. The said decree of the possession is based upon bonafide need as pleaded in the plaint of that husband of landlady. In support of the said claim of bonafide need, the husband of the landlady has entered into witness box so as to depose and justify the need.

While dealing with the same, the learned trial Court has framed Issue No. 2 thus:

2. Does plaintiff prove that the suit premises are reasonably and bonafide required for occupation by herself?

and given finding on the said issue in the affirmative.

While dealing with the above referred issue, the learned trial Court has observed that the premises in question wherein the present petitioner is doing business for more than 40 years, the husband of the landlady Mishrimal has deposed that he has no source of income and want the suit premises for running wholesale business of Gur (jaggery). He further stated that he cannot run business from the residential premises because it is not the business area. As such, the learned trial Court has decreed the suit.

The Appellate Court has also confirmed the said findings i.e. bonafide requirement pleaded by the landlady for establishing business by her husband, and as such, confirmed the judgment and decree passed by the Court below of eviction.

7. The ground that is canvassed by the petitioner in the present petition is

subsequent events qua bonafide need of landlady or her husband should have been taken into account by the Courts below. The learned Counsel for the petitioner vehemently urged that the landlady has expired during pendency of the appeal and legal heirs of landlady i.e., her husband and her son were brought on record. During pendency of the present petition, the legal heir namely husband of the landlady has expired and petition is defended by only legal heir i.e., son of the landlady.

8. In the light of above, the contention of the petitioner is that bonafide need of the plaintiff and her husband has extinguished and as such, the orders passed by the Courts below needs to be quashed and set aside. In support of this contention, the learned Counsel for the petitioner has relied upon the judgment delivered by the Apex Court in the case of Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others, . The Apex Court, according to the petitioner, mandates that subsequent developments which has direct bearing over the pleadings in the petition of the bonafide need is required to be looked into and the same needs to be re-assessed.

9. While responding to the above mentioned submissions, the learned Counsel for the landlady/land owner has submitted that both the Courts below have concurrently held that bonafide need of the landlady/landlord is proved. There is enough evidence available on record that the shop in question is required for bonafide occupation of the landlord. In support thereof, the learned Counsel has placed reliance upon the judgment of the Bombay High Court in the case of Balwant P. Doshi Vs. Shantaben Dhirajlal Shah and Another, . The learned Counsel further submitted that requirement of the son has to be taken into account as landlord is best judge of the situation. The learned Counsel for the respondent further submitted that the bonafide need as was existing on the date of filing of the suit needs to be taken into consideration and the subsequent developments are of hardly any consequences while deciding the petition. In support of the contention of the respondent, reliance is placed in the matter of Dudhasingh Bala Chavan Vs. Shri Murlidhar Gyanba Kudale since deceased through his legal heirs (Smt. Kamal @ Prema Murlidhar Kudale, Mr. Milind M. Kudale and Mr. Mukund M. Kudale), .

10. According to the respondent, son who is pursuing the present proceedings is in need of the premises and as such, the petition preferred by the petitioner is liable to be rejected. The learned Counsel further urged that the son who is a legal heir of the plaintiff landlady enters into the shoes of the plaintiff and as such, the clause of bonafide need of the plaintiff is inherited by the son and as such the decree of possession does not call for any interference.

11. From perusal of the pleadings raised by the landlady in support of her bonafide need as reflected in the suit demonstrates that bonafide need of landlady namely Smt. Jadaobai and her husband is pleaded in clear terms. It is stated in paragraph-3 of the said plaint that the premises in question are required by the landlady so as to establish business alongwith her husband.

There are no pleadings as regards bonafide requirement of the son.

12. The perusal of evidence of husband of the plaintiff who has entered into witness box in clear terms admits that other legal heir namely son who is presently pursuing the petition was not staying with the landlady or her husband.

13. The fact remains that the landlady has expired during pendency of the appeal whereas her husband who was brought on record as one of the legal heir has expired during pendency of the present petition. The Apex Court in the matter of Sheshambal (Dead) Through LRS. versus Chelur Corporation Chelur Building and others (supra) has laid down parameters particularly in paragraphs-12,13,15,16 and 17 as regards subsequent developments to be taken into account while deciding the claim of the landlord and tenant for bonafide need. The said observation reads thus:

13. Neither before the Rent Controller nor before the Appellate Authority was it argued that the requirement in question was not only the requirement of the petitioner owners of the premises but also the requirement of any other member of their family whether dependent upon them or otherwise. Not only that, even in the petition filed before this Court the requirement pleaded was that for the deceased widowed owner of the demises premises and not of any member of her family.

15. The position may indeed have been differentiated if in the original petition the petitioner owners had pleaded their own requirement and the requirement of any member of their family dependent upon them. In such a case the demise of the original petitioners or any one of them may have made little difference for the person for whose benefit and bonafide requirement the eviction was sought could pursue the case to prove and satisfy such requirement.

16. Confronted with the above position Mr. Vishwanathan made in generous submission. He contended that the rights and obligations of the parties get crystallised at the time of institution of the suit so that any subsequent development is not only inconsequential but wholly irrelevant for determination of the case before this Court. Learned counsel sought to extend that principle to the case at hand in an attempt to persuade us to shut out the subsequent event of the death of the original petitioners from consideration. We regret to say that we do not see any basis for the submission so vehemently urged before us by Mr. Vishwanathan.

17. While it is true that the right to relief must be judged by a reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the institution that obtains on the date the relief is actually

granted.

29. In the light of what we have stated above, we have no hesitation in holding that on the death of the petitioners in the original eviction petition their right to seek eviction on the ground of personal requirement for the demised premises became extinct and no order could on the basis of any such requirement be passed at this point of time.

14. It is required to be taken a note of the fact that other legal heir i.e., son is pursuing the present petition. There are no pleadings in support of the bonafide need of the son. What is pleaded in the plaint is bonafide need of the husband of the landlady. The evidence also speaks about the bonafide need of the husband of the landlady. There is no word in the evidence about the bonafide need of son.

15. It is worth to observe here that if the legal heir intend to continue the proceedings much less the proceedings wherein possession of the property is sought under the clause "bonafide need" of the Rent Act, the judgment of the Apex Court cited supra mandate that the bonafide need of legal heir should be pleaded and established. Just because he is legal heir, that does not if-so-facto given him right to claim the possession of the property on the ground of bonafide need, that was established by the original plaintiff. In the eviction proceedings which were initiated for the possession of the property, the landlady or her husband has pleaded their own requirement that the premises to be occupied by them for the purpose of carrying out the business. In the said civil suit or even in the evidence, there is no whisper about bonafide need of any member/L.R. of the plaintiff and the claim of bonafide need was restricted to that of landlady and her husband, who have expired way back.

16. In view of the above observations, subsequent developments i.e., death of landlady and death of her legal heir whose bonafide need was pleaded if taken into account, the judgment decreeing the suit for possession for bonafide need needs to be set aside.

17. In that view of the matter, writ petition is allowed. The judgment and decree passed by the learned Civil Judge, Junior Division, Nandurbar on 11/08/1995 in Regular Civil Suit No. 81 of 1988 confirming by the Additional District Judge, Nandurbar in Civil Appeal No. 71 of 1995 by judgment and decree dated 26/02/2001 is hereby quashed and set aside. Rule made absolute in above terms. In the circumstances, there shall be no order as to costs.

18. In view of the final disposal of the petition, civil application also stands disposed of accordingly.