
(2019) 01 BOM CK 0097

In the Bombay High Court

Case No : Writ Petition No. 4827, 4828 Of 2016

Nilkanthrao Raghunathji Chute

APPELLANT

Vs

Dattatraya Narayanrao Balakhe

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Citation : (2019) 01 BOM CK 0097

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : A.S. Kilor, D.N. Dani, Mohan B. Turankar

Final Decision : Allowed

Judgement

Manish Pitale, J.

1. These are two Writ Petitions filed by the landlord (original plaintiff) against two tenants (original defendants), challenging orders passed by the Court of District Judge-10, Nagpur, whereby appeals filed by the respondents/tenants have been allowed and decrees of eviction passed against them by the Additional Judge, Small Causes Court, Nagpur, have been set aside. The suit premises are two shops in a building known as 'Sai Sadan', on Plot No.1, Nandanwan Layout, Main Road, Nagpur, which is a building owned by the petitioner-landlord. Of the four shops facing the road in the said building on the ground floor shop nos. 2 and 4, are in occupation of the respondents/tenants herein. The petitioner-landlord filed suits for eviction in October, 2009, against the respondents/tenants in respect of the aforesaid two shops on the ground of bona fide need and arrears of rent. The Court of Additional Judge, Small Causes, Nagpur (trial Court) passed decrees of eviction against the respondents/tenants on 07-12-2011, thereby allowing the suits filed by the petitioner and directing the respondents/tenants to handover the possession of the suit property within one month to the petitioner, in addition to other ancillary directions. The respondents/tenants filed appeals before the Court of District Judge, Nagpur (appellate Court). By the

impugned judgments and orders the appeals filed by the respondents/tenants were allowed and the decrees passed in favour of the petitioner were set aside. The two Writ Petitions have been filed challenging the said judgments and orders passed by the appellate Court in favour of the respondents/tenants.

2. Mr. Anil Kilor, learned Counsel appearing on behalf of the petitioner in the two Writ Petitions, submitted at the outset that the petitioner-landlord was not pressing the challenge in respect of decrees on the ground of arrears of rent. The appellate Court had found that the notice issued by the petitioner-landlord on the ground of arrears of rent itself was defective and that the petitioner-landlord has chosen not to challenge the said finding of the appellate Court. Therefore, the challenge in the present Writ Petitions became limited to the question of eviction on the ground of bona fide need.

3. Learned Counsel appearing for the petitioner submitted that the trial Court had analyzed the pleadings, evidence and material on record in the proper perspective to come to the conclusion in favour of the petitioner-landlord in respect of the said two suit shops on the ground of bona fide need and that while upsetting the finding of the trial Court, the appellate Court had committed a grave error in appreciation of the evidence and material on record, leading to perverse findings against the petitioner-landlord. It was submitted that the appellate Court decided the appeal in favour of the respondents/tenants in the teeth of settled principle of law that the landlord is the best judge of his/her need and that the Court cannot supplant its view as regards the need of the landlord. It was submitted that the findings rendered by the appellate Court would show that the appellate Court in the impugned judgments and orders had taken into consideration the material on record to reach findings as to how the landlord could satisfy his need or that of his daughter-in-law by continuing to carry on the business from the existing premises along with the two shops out of four shops that were already vacant. It was submitted that the approach adopted by the appellate Court was unsustainable and therefore, the impugned judgments and orders deserve to be set aside and the decrees granted by the trial Court deserve to be restored. Learned Counsel appearing for the petitioner relied upon the judgments of this Court in the case of *Anand S. Lad vs Amira Abdul Razak and others*, reported at 2014(3) Mh.L.J. 218, *Manohar Auto Stores, Amravati and others vs Kalpesh Hemantbhai Shah*, reported at 2010(3) Mh.L.J. 331 and the judgments of the Hon'ble Supreme Court in the case of *Ragavendra Kumar vs Firm Prem Machinery & Co.*, reported at (2000) 1 SCC 679 and *Bhimanagouda Basanagouda Patil vs Mohammad Gudusaheb*, reported at (2003) 3 SCC 101.

4. On the other hand, Mr. D. N. Dani and Mr. M.B. Turankar, learned Counsels appearing for the respondents/tenants in the two Writ Petitions, submitted that the appellate Court was justified in reversing the decrees granted by the trial Court and in dismissing the suit for eviction filed by the petitioner-landlord. It was submitted that the nature of pleadings, evidence and material on record demonstrated that the need projected by the petitioner-landlord was not bona

fide. It was pointed out that the business of beauty parlour which was being carried out by daughter-in-law of the petitioner was already comfortably being carried out in a bed room right behind the shops in question and that shop no.3 in particular could easily be used by daughter-in-law of the petitioner as an access to the room in which the business of beauty Parlour was already being carried out. It was submitted that the daughter-in-law of the petitioner who had appeared as a witness in support of the aforesaid claim of bona fide need had failed to demonstrate that she required all the four shops facing the road, including the shops in possession of the respondents/tenants for running the business of beauty parlour. In addition, it was submitted that the daughter-in-law had no licence to run the said business and that she had failed to place on record why the suit shops were required for running the business of beauty parlour, which she was already running in existing premises. It was further submitted that the aspect of comparative hardship was decided by the appellate Court in favour of the respondents/tenants. While the petitioner was earning pension and his son was earning salary from his service and daughter-in-law was comfortably earning from the existing business of beauty parlour, the respondents/tenants solely relied upon the business that they were carrying out from the suit shops for earning their bread and that therefore, the findings rendered on comparative hardship by the appellate Court could not be interfered with. On this basis, it was submitted that both the Writ Petitions deserved to be dismissed. The learned Counsel for the respondents/tenants relied upon judgments of the Hon'ble Supreme Court in the case of Deena Nath vs Pooran Lal, reported at (2001) 5 SCC 705, Maqboolunnisa vs Mohd. Saleha Quaraishi, reported at (1998) 9 SCC 585, Kempaiah vs Lingaiah and others, reported at (2001) 8 SCC 718, Mattulal vs Radhe Lal, reported at AIR 1974 SC 1596 and judgments of this Court in the case of Sugarbai Mohd. Siddiq and others vs Ramesh Sundar Hankare deceased by L.Rs., reported at 1997(2) Mh.L.J. 825.

5. Heard Counsel for the parties. Since the learned Counsel appearing for the petitioner-landlord has restricted challenge to the impugned judgments and orders on the question of bona fide need, the present Writ Petitions are being decided only on the said question. It is recorded that the challenge to the impugned judgments and orders of the appellate Court on the question of arrears of rent is given up by the petitioner-landlord.

6. On the question of bona fide need, it was stated in the suits filed on behalf of the petitioner-landlord in respect of shop nos. 2 and 4, in possession of the respondents/tenants that the entire area comprising all the four shops, coming to about 550 to 600 Sq.ft. was required by the daughter-in-law of the petitioner-landlord for her business of beauty parlour. It was stated in the suits filed on behalf of the petitioner-landlord that since his daughter-in-law was carrying on business of beauty parlour on the rear side of the suit shops in a bed room, she could not make progress in the said business and that she required the front portion comprising all the four shops in order to develop and increase the business for augmenting the earning of the family. The evidence placed on record

on behalf of the petitioner-landlord was of a nature similar to the pleadings in the suits. In fact, the said daughter-in-law appeared as a witness of the petitioner-landlord in respect of the said bona fide need projected in the suits filed by the petitioner-landlord.

7. The trial Court took into consideration the pleadings and the evidence on record and came to a conclusion that bona fide need had been proved by the petitioner-landlord, particularly in respect of the need of the daughter-in-law to carry on her business from the four shops, including suit shops, which were located in front side of the said building. It was recorded that the said four shops located in front side were the commercial part of the building in question and that since the daughter-in-law of the petitioner-landlord required area of about 600 sq.ft., which comprised all the four shops, the need had been proved.

8. As against this, in the impugned judgments and orders, the appellate Court took into consideration the location of the bed room on the rear side of the suit shop from where the daughter-in-law of the petitioner- landlord was carrying on business of beauty parlour. The appellate Court has gone into the question of location of the shops, the area of the four shops and the manner in which the daughter-in-law of the petitioner- landlord could still carry on her business of beauty parlour in the existing premises i.e. bed room with the aid of the vacant shop nos. 1 and 3, particularly shop no.3, from which there was access to the said bed room. It is undisputed that shop no.3 was vacant and has continued to be in possession of the petitioner-landlord during the pendency of the litigation and that shop no.1 became available to the petitioner-landlord during the pendency of the litigation between the parties. These aspects have been considered by the appellate Court and the following findings have been rendered in favour of the respondents/tenants and against the petitioner- landlord.

"14] As to Point No.2 & 3 : The landlord has also come with the case of bonafide need of the suit premises for running a beauty parlour by his daughter-in-law PW-2 Madhura. It is not much disputed by the defendant/tenant that daughter-in-law of plaintiff runs a beauty parlour from the bed room of the residential place which is to the back side of the suit ship block. It is also matter of record that the plaintiff earlier has filed the suit for bonafide need for running the Girls Hostel, after his retirement from his services. During pendency of the suit on 16.7.2010 by amending plaint the suit shop has been claimed for running a beauty parlour for his daughter-in-law. It is stated that all four shops total admeasuring 550-600 sq ft are required for running the beauty parlour. Oral evidence of PW-1 is concerned, obviously, he himself has not to run the beauty parlour therefore, he has examined his daughter-in-law Madhura to establish her bonafide need in respect of the suit property.

15] As deposed by PW-2 Madhura, all these four shops are admeasuring about 550- 600 sq ft. She with her family and children reside to the back side of those shops. Her father-in-law resides on the first floor. Her children are school and college going requires a separate room for study and a separate bed room. She

runs her beauty parlour from the bed room, therefore could not make a progress. Therefore, she intends to shift it to the front portion where these shops are situated. Oral evidence of PW-1 and PW-2 are put to detail cross-examination by the defence side. The witnesses are cross examined to the point that shop No.3 is lying vacant since prior to 3 years. PW 2 in other RCS No.658/12 in para No.8 deposed that shop No.3, is front of her beauty parlour, and it lying vacant. There is a access from the side shop No.3 to their residential place, the beauty parlour and the First Floor of the building. By this cross-examination, it is sufficiently brought on record the Shop No.3 which is lying vacant is more suitable for running the beauty parlour.

16] In examination-in-Chief, PW-2 though stated that she requires the bed room where she has been running a beauty parlour for her school and college going children for study purpose. However, such a need has not been stated in the plaint by the plaintiff her father-in-law. Besides it, the witness in her cross examination has disposed that there are 7 to 8 rooms on the First Floor where her parents-in-law are residing. Even if, the requirement of a school and college going children is considered it has come on record that there are sufficient rooms on the First Floor of the building. So far as requirement of the suit shop for the purpose of running beauty parlour is concerned, inconvenience has been alleged on the ground that it is inside the building and not to the front. She want to shift the beauty parlour in the suit shop materially for the reason that it is the front portion of the building so that she can developed her beauty parlour from the front portion touching the road. Inconvenience or inability is not raised on ground that bedroom is not sufficient or spacious for beauty parlour. In this background, if her convenience and progress of business of beauty parlour has to consider it appears that the shop No.3 which is lying vacant since long can be a suitable place for her, from where she can easily enter in her bed room as well as First Floor and to the back side to her residential premises. Vice versa internal easy access is there from her bedroom to shop no.3. No any reasons are stated for not using the shop No.3 by her for running her business of beauty parlour in spite of lying vacant for three years. Not only shop No.3 but it is also undisputed that shop No.1 has also been lying vacant.

17] It is settled principle of law that the landlord is the best judge of his requirement of residential or business purpose and has complete freedom in the matter as laid down by the Hon'ble Supreme Court in the case of Raghvendrakumar Vs. Firm Prem; Ajit Singh Vs. Jit Ram; our Hon'ble High Court; in the case of "Anand Lad Vs. Amira Abdul," relied upon by the learned advocate for the respondent. It must be noted that even if, the bona fide requirement plaintiff to satisfy the need of his daughter- in-law for running beauty parlour is considered still there is a sufficient reasonable accommodation with the plaintiff to satisfy the need of his daughter-in-law by occupying the shop No.3 to that effect. No explanation is coming from the plaintiff. PW-1 and PW-2 for not occupying the shop No.3 and to keep it lying vacant. Merely to say that all four shops are required for running beauty parlour is not sufficient in the light of the

fact that the measurement of the bed room from where she runs her beauty parlour is not stated. What it appears that for developing her beauty parlour she requires front portion and such a need can be satisfied by occupying the shop No.3 for the purpose. The need of the plaintiff therefore does not appear to be genuine and bonafide need. It neither appears a reasonable nor bonafide need of the plaintiff otherwise she would have taken at least some initiative by occupying the shop No.3 to commence her business of parlour. Considering the distinguished facts of the case cited and present case the ration so relied upon are not applicable. In case of Raghvendra the shops with the landlord were not suitable for his business. In case of "Ajit Singh" landlord was not having any other shop than the shop in question. In case of Anand the landlords other premises were already occupied by others. These verdicts cannot be applied in our case."

9. A perusal of the above quoted reasoning and findings of the appellate Court, which is more or less similar in both the impugned judgments and orders, shows that despite being aware of the settled principle of law that the landlord is the best judge of his /her need, the appellate Court has gone about discussing as to the manner in which the need of the daughter-in-law of the petitioner-landlord for carrying on the business of beauty parlour can be satisfied by various alternatives involving the existing premises i.e. the bed room on the rear side of vacant shop nos. 1 and 3. The appellate Court seems to have analyzed the material on record with a view to give various alternatives to the petitioner-landlord in the present case to carry on the business of beauty parlour, without in any manner disturbing the respondents/tenants. In doing so, the appellate Court has sought to justify its findings by giving suggestions to the daughter-in-law of the petitioner-landlord as to how it would be appropriate for her to continue her business of beauty parlour in the bed room by utilizing shop no.3 in particular, which according to the appellate Court could be used for direct access to the said bed room. The approach of the appellate Court is clearly in the teeth of settled principle of law and therefore, the finding rendered in the above quoted portion of the impugned judgments and orders, is rendered perverse and unsustainable.

10. The learned Counsel appearing for the petitioner-landlord is justified in relying upon the judgments of the Hon'ble Supreme Court in the case of Ragavendra (supra) and judgment of this Court in the case of Anand (supra), wherein it has been specifically laid down that the Court cannot dictate to the landlord as to how she should continue to occupy the premises in her possession to satisfy the need projected in the suit, without inconveniencing the tenants whose eviction is sought. The relevant portion of the judgment in the case of Ragavendra (supra), reads as follows:-

"10. The learned Single Judge of the High Court while formulating first substantial question of law proceeded on the basis that the plaintiff-landlord admitted that there were number of plots, shops and houses in his possession. We have been taken through the judgments of the courts below and we do not find any such admission. It is true that the plaintiff-landlord in his evidence

stated that there were number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that suit premises is suitable for his business purpose. It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter, (See: Prativa Devi (Smt.) v. T.K Krishnan, [1996] 5 SCC 353. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

11. The relevant portion in the case of Anand (supra), reads as follows:-

"15. It is well settled that the landlord is the best judge of his residential requirement and as such, it is for him or her to decide how and in what manner she should live, if the landlord desires the beneficial enjoyment of her own premises when the other premises are occupied, she cannot be subjected to an inconvenience as she has no other premises at her exclusive disposal. It is not the duty of the Court to dictate to her to continue occupy such other premises which cause her inconvenience. In the present case, the record reveal that it is the contention of the respondent No.1 that grave inconvenience is caused to her as she has to travel from Margao from where she is presently coming to Panaji to pursue her legal profession. This will have to be accepted as the petitioner has not adduced any evidence to show that the respondents have other vacant residential premises."

12. Apart from this, a reference is made by the learned Counsel appearing for the petitioner-landlord to the judgment of this Court in the case of Manhar (supra), in order to invite the attention of this Court regarding change in approach of the Courts while deciding disputes between landlords and tenants over the years. The learned Counsel submitted that while earlier in point of time, the Courts adopted the approach of being protective of need of tenants in view of the socio- economic circumstances prevailing at that time. With passage of time, the Courts had adopted a different approach and that proceedings under the rent legislations were decided by adopting a practical approach, more in tune with the present socio-economic conditions. It is a matter of fact that the tenants in occupation of premises have continued for long periods of time and their eviction by invoking provisions of rent legislations has led to litigation spanning over long periods of time due to which in some cases, even the bona fide need projected by the landlords has vanished or subsequent events have occurred due to which the nature of bona fide need has undergone a change. In these circumstances, there has been a definite change in the approach of the Courts insofar as interpretation of rent legislations is concerned and considering the approach of the Courts as manifested by judgments of this Court and the judgments of the Hon'ble Supreme Court in the recent past, it is necessary to examine in the present case as to whether the appellate Court was justified in reversing the orders of the trial Court and dismissing the suits for eviction filed by the petitioner-landlord herein.

13. Applying the principles of law that have been highlighted on behalf of the petitioner-landlord, in the present case, it becomes clear that the appellate Court clearly reached perverse findings by supplanting its own opinion as regards the need of the landlord instead of examining whether the need projected by the landlord in the present case was bona fide on the touchstone of the landlord being the best judge of his/her need. The appellate Court was clearly not justified in holding that the daughter-in-law of the petitioner-landlord could easily carry on her business in the bed room in which she presently runs the business and that the two shops i.e. shop nos. 1 and 3 could be utilized by her for the said purpose. The appellate Court completely ignored the specific pleadings, evidence and material placed on record on behalf of the petitioner-landlord, that the need was for an area of about 600 sq.ft. in portion of the building that was in front facing the road for better commercial value of the business of beauty parlour and that the area of 600 sq.ft. was comprised all the four shops in the building which included two suit shops i.e. shop nos. 2 and 4, in possession of the respondents/tenants. This aspect was wrongly ignored by the appellate Court while rendering its findings against the petitioner-landlord. In this context, the judgments relied upon by the learned Counsel for the respondents/tenants in the case of Mattulal, Deena Nath, Maqboolunnisa Kempaih and Sugarbai (supra) are distinguishable on facts because in those cases while the landlord had projected specific area required for the business, it was found on facts that an adjacent shop or premises of similar area was available to the landlord or that such premises had become available to the landlord during the pendency of the litigation to carry out his/her business. In the present case, even if the two shops i.e. shop nos. 1 and 3 are taken into consideration, the two shops put together still do not satisfy the bona fide need projected and proved on behalf of the petitioner-landlord. The facts of the present case also do not show that the projected need of the petitioner- landlord was a mere wish or that the intensity of need was not proved by supporting material. In the present case, as found by the trial Court, there was sufficient material placed on record on behalf of the petitioner-landlord to show that the requirement was of all the four shops in the building, two of which were in possession of the respondents/tenants, for the business of beauty parlour run by the daughter-in-law of petitioner-landlord. Hence, the judgments placed on record by the learned Counsels for the respondents would be of no assistance to them.

14. The other aspect of the present case, which is essentially a concomitant of bona fide need, is the of question of comparative hardship. While the learned Counsels appearing for the respondents/tenants have claimed that the said issue was correctly decided by the appellate Court in the impugned judgments and orders, this is vehemently opposed by the leaned Counsel appearing for the petitioner-landlord. The reason why the appellate Court held in favour of the respondents/tenants is that the two suit shops in possession of the respondents/tenants have been found to be their source of income for themselves and their families, while the daughter-in-law of the petitioner is already found to be

earning sufficient income from the business of beauty parlour, in addition to the pension being earned by the petitioner-landlord and the salary being earned by her husband.

15. It is obvious that when a person is evicted from tenanted premises, particularly when the person is running business from shop premises, he or she is bound to suffer some amount of hardship as there is bound to be some adverse effect on the business of such person. But, that in itself cannot be a deciding factor because if that is the sole criterion taken into consideration then no tenant could ever be evicted from tenanted premises. The Court is supposed to analyse the comparative hardship taking into consideration the relevant material on record. In the present case, it has been brought on record on behalf of the petitioner-landlord that by passage of time the need of the family, particularly that of the children as regards the residential portion of the building has increased, as a result of which the bed room from which the daughter-in-law of the petitioner-landlord is carrying on business, is required for the family. It was also found by the trial Court that the business of beauty parlour of daughter-in-law of the petitioner-landlord is not increasing and it is not developing because of the placement of the room from which the said business is being run. It is obvious that the business of daughter-in-law of the petitioner-landlord of running the beauty parlour would certainly develop further upon it being run from the four shops facing the road, which includes the two shops in possession of the respondents/tenants. In these circumstances, only because the petitioner- landlord and his daughter-in-law may be having some other source of income would not come in their way to demonstrate that even on the question of comparative hardship the finding rendered by the appellate Court is not sustainable. The learned Counsel appearing for the petitioner- landlord is justified in placing reliance upon the judgment in the case of Bhimanagouda Patil (supra), wherein the Hon'ble Supreme Court has taken into consideration the aforesaid question of comparative hardship and it has been specifically held that the affluence of the landlord would in itself not be a factor to lead to adverse findings against the landlord in regard to comparative hardship. It has been held in the said judgment that even if some adverse impact could be projected for the tenants upon vacation of the suit premises, the same could be mitigated by giving reasonable time to the tenant to vacate the suit shop premises. Therefore, the contentions raised on behalf of the respondents/tenants that the suit shops are their only source of income cannot be accepted in defence of the findings rendered by the appellate Court in the present case.

16. As regards the question as to whether the daughter-in-law of the petitioner-landlord was qualified to run a beauty parlour or not and that she had failed to produce any licence in that regard, it is on record that the daughter-in-law of the petitioner-landlord was indeed running the business of beauty parlour from the very building in question and this was not disputed by placing on record any material on behalf of the respondents/tenants. Therefore, it could not be said that for the said reason, the petitioner-landlord could be deprived of decree of

eviction in his favour.

17. The learned Counsels appearing for the respondents/tenants have also relied upon judgment of the Hon'ble Supreme Court in the case of Anand (*supra*) to contend that the appellate Court was the last Court on facts and that this Court should be slow in interfering with the findings on facts rendered by the appellate Court. In the said judgment, the Hon'ble Supreme Court has laid down the principle that while considering a Second Appeal, the High Court, ought not to interfere with the findings of facts rendered by the First Appellate Court. In the present case, this Court is considering Writ Petitions filed by the petitioner-landlord and not Second Appeals. In any case, there cannot be any quarrel with the proposition laid down by the Hon'ble Supreme Court in the aforesaid judgment about the First Appellate Court being the final Court on facts. At the same time, while exercising Writ jurisdiction, this Court is certainly well within its jurisdiction to interfere with and to set aside findings that are found to be perverse and when such findings are based on wholly erroneous appreciation of evidence and material on record and in the teeth of settled principles laid down by the Hon'ble Supreme Court and this Court.

18. The above quoted portion of the impugned judgments and orders of the appellate Court clearly shows that not only are the findings of the appellate Court perverse, but they are clearly in the teeth of the law laid down by the Hon'ble Supreme Court and this Court to the effect that the landlord is the best judge of his/her need and further that the Court cannot supplant its view in respect of the same. Therefore, the contention raised on behalf of the respondents/tenants in that regard cannot be accepted.

19. In view of the above, both the present Writ Petitions are allowed. The impugned judgments and orders passed by the appellate Court are quashed and set aside and the decrees of eviction passed against the respondents/tenants by the trial Court are restored.

Considering the fact that the respondents/tenants have vehemently contended about the adverse impact that their business may suffer due to the eviction decree, to mitigate the same, it is directed that the respondents/tenants shall vacate the suit shop premises within a period of six months from today. It is made clear that the respondents/tenants shall clear all arrears of rent, if any, and that they shall continue to pay rent for the remaining period of six months granted to them and further that they shall not induct any third party in the aforesaid suit shop premises. The respondents/tenants shall handover peaceful and vacant possession of the suit shops to the petitioner-landlord on or before the expiry of six months from today.

20. Rule made absolute in above terms in both the petitions.