

(2025) 09 BOM CK 0355
In the Bombay High Court
Case No : Writ Petition No. 4773 Of 2001

Pandurang Tatu Keni

APPELLANT

Vs

Laxman Sakharam Patil

RESPONDENT

Date of Decision : 23-09-2025

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(i), 13(2)

Citation : (2025) 09 BOM CK 0355

Hon'ble Judges : M.M. Sathaye, J

Bench : Single Bench

Advocate : Vijay Dhadam, Kush Lohankar, Ravi Kadam, Amruta Kundap

Final Decision : Allowed

Judgement

M.M. Sathaye, J

1. Heard learned Counsel for the parties. Perused the record. Rule was issued on 14.12.2001.

2. The Petitioners are legal heirs of original Plaintiff who had filed R.A.E. Suit No. 5073/1980 against original Defendant. Plaintiff is landlord and Defendant is tenant. The suit was filed under provision of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, ('the said Act' for short) seeking eviction of tenant from the suit property on grounds of default, non-user, change of user, acquisition of alternate suitable premises and personal bona-fide requirement. According to the averments in the plaint, the suit property is room No.1 (shop) in house No. M/4993 (2A) at Deonar village, Mumbai-400088. It is common ground before the Court that suit property is a shop and not an open piece of land.

3. During pendency of the said suit, the Plaintiff amended the plaint and added pleadings contending that he is without regular service or income and his daughter Charulata who is 28 years old non-matric person with knowledge of tailoring, need the suit property to start Plaintiff's business of estate agency as

well as for doing tailoring business.

4. Parties led evidence and the Trial Court after hearing both the sides, decreed the said suit on 19.08.1997 granting eviction, on the ground that the Plaintiff has proved his bona-fide reasonable requirement, that greater hardship is in favour of the Plaintiff and on the ground that the Defendant has acquired suitable premises for his business. The Defendant Tenant filed appeal No. 626 of 1997 challenging the said Judgment and decree of eviction. The Appellate Bench of the Small Causes Court at Mumbai, who had tried the said appeal, was pleased to allow the said appeal, thereby setting aside the Judgment and Decree of eviction and dismissing the suit.

5. Admittedly, during the pendency of the appeal, original Plaintiff-landlord has expired and daughter Charulata has got married. Apparently the appeal is restricted to ground of reasonable and bona-fide requirement only.

6. Learned Advocate for the Petitioners (present legal heirs of original landlord) contended that the Appellate Court has considered the subsequent events of original landlord passing away and daughter Charulata getting married, in perverse manner, inasmuch as the requirement as pleaded has not come to an end and cannot be said to be completely extinguished. He submitted that non-examination of daughter Charulata cannot be held as fatal, and the landlord is the best judge of his own requirement and neither the tenant nor the Court can dictate terms about use of landlord's premises. He submits that the decision arrived at by the Trial Court on a well reasoned Judgment could not have been reversed by the Appellate Court in the facts and circumstances of the case. He has relied upon following Judgments in support of his case.

(i) Mehmooda Gulshan v/s. Javaid Hussain Mungloo, (2017) 5 SCC 683.

(ii) Nidhi v/s. Ram Kripal Sharma (dead) through Legal Representative, (2017) 5 SCC 640.

(iii) Uday Shankar Upadhyay and Ors. v/s. Naveen Maheshwari (2010) 1 SCC 503.

(iv) Gaya Prasad v/s. Pradeep Srivastava, (2001) 2 SCC 604

(v) Kamleshwar Prasad v/s. Pradumanju Agarwal (dead) by LRs., AIR 1997 SC 2399

7. Per contra, learned counsel for the Respondent/tenant submitted that the Appellate Court has rightly considered the subsequent developments which have taken place during the pendency of the appeal and it has been rightly held that since the landlord has expired and daughter Charulata has got married, no requirement subsisted on the date of impugned order and therefore, the appeal has been rightly allowed. He submitted that the landlord has other property in his possession and therefore, there is no bona-fide requirement. He submitted that requirement of daughter Charulata could not have been considered anyway,

in absence of her being examined by the landlord. He relied upon the Judgment of Sheshambal (dead) through LR. v/s Chelur Corporation Chelur Building and Ors. (2010) 3 SCC 470 in support of his case.

8. I have carefully considered the rival submissions made by the parties.

9. At the outset, it must be noted that the Appellate Court has framed first point about Section 13(1)(i) of the said Act. Perusal of the plaint indicates that the suit property is 'a shop' on the ground floor and there is no dispute about it. In that view of the matter, Section 13(1)(i) providing for a situation where suit premises is land being reasonably and bona-fide required for erection of new building cannot apply and the said point is completely irrelevant for the consideration.

10. Second point framed is regarding reasonable and bona-fide requirement as pleaded by the Plaintiff, which is held in negative.

11. Reasons given by the Appellate Court for allowing the appeal can be found from paragraph 19 onwards. Plaintiff amending the plaint in 1993 after a period of 13 years from filing of the suit has been considered by holding that the pleadings at the time of filing of the suit in 1980 were vague to decide the requirement and subsequent pleadings about requirement has been found as not convincing and acceptable. It is held that the statement of Plaintiff's witness about his desire to start estate agency is not believable. It is held that satisfactory and clinching documentary evidence to establish that the Plaintiff has ever done any business of estate agency, has not been brought before the Trial Court. Therefore it is held that the Plaintiff has failed to prove his requirement. The Appellate Court has then considered in paragraph

24 of the impugned Judgment, premises admeasuring 20 x 25 sq. ft. in which the Plaintiff and his daughter are 'staying' and it is held that the Plaintiff has not shown any intention of doing work from this premises. For this reason, the case of reasonable and bona-fide requirement has been turned down. The Appellate Court has then considered that during pendency of the appeal, daughter Charulata has got married in 1999 and the original Plaintiff has also expired in July 2000 and therefore, as on the date of impugned order, there is no requirement subsisting at all.

12. Before advertng to the legal position, I have gone through pleadings and evidence on record for objective satisfaction. Following position emerges :

12.1) The Plaintiff entered witness box and stated that he has left the service in 1966 and is thereafter surviving on whatever rent received by him. He has stated that he is engaged in brokerage business for small estate matters. He has stated that he and his daughter are residing in the family and his daughter is doing tailoring work on the mezzanine floor ('mala') of the residential house. He has stated that the said place is very inconvenient for doing tailoring business as customers visit residential house every now and then. He has further stated that he is doing business of estate broker from his house/residential premises and

there is no independent office set up. He has stated that suit premises are required for doing the business, both for himself and for his daughter. Perusal of the cross-examination indicates that nothing fatal has been extracted from the Plaintiff. He has admitted that he has got another chawl but it is occupied by 6 tenants who are paying meagre amount rent (Rs. 40/- per month each).

12.2) P.W. No.2 has supported the case of the Plaintiff, that the Plaintiff is doing business of estate broker. P.W. No.3, who is a Rationing Inspector, has entered witness box and stated from the office record that address of ration shop belonging to original Defendant has been changed to new premises from August 1979.

12.3) In the cross-examination, the Defendant had admitted that after causing appearance in the suit, he has not made any efforts to acquire any other premises.

13. With the aforesaid statements and case propounded by the landlord before the Trial Court, in my view the requirement as pleaded for himself and his daughter was sufficiently proved and the Trial Court had rightly decreed the suit. If this is not sufficient for the landlord to prove his bona-fide requirement, I wonder what more is required ? The Appellate Court has ex-facie held against established position of law that the landlord is the best judge of his own requirement. The need for family (daughter) is both pleaded and proved by entering witness box.

14. The observation of the Appellate Court that because landlord amended the pleadings 13 years after filing of suit, the requirement was vague and cannot be called as convincing, is perverse in my considered view. The amendment was permitted by the Trial Court. Parties proceeded on the basis of amended case, which was duly answered by the other side. In such circumstances, the amendment during pendency of the suit cannot be held to the prejudice of Plaintiff. The observation by the Appellate Court about evidence of other witnesses being not satisfactory, also does not stand the scrutiny of proper appreciation. The Plaintiff's witnesses has clearly supported the case of the Plaintiff that Plaintiff was working as estate broker. When requirement is pleaded for business premises with inconvenience at home explained, the consideration of 20 x 25 sq. ft. 'residential premises' as 'availability' with the Plaintiff, is perverse to say the least. Availability of the residential house cannot be compared with a shop, when requirement is pleaded for business purpose. It is material to note that landlord has entered into witness box and specifically asserted that since his daughter is working on a mezzanine floor for her tailoring business and since the customers keep coming at house, it is causing inconvenience. He has also pleaded his wish to work as estate broker from a shop, which is business premises. In the teeth of such clear assertion of the requirement, the Appellate Court was not justified in pitching residential premises against the shop premises. The requirement pleaded is certainly more than mere desire and well established. It is settled position of law that the Plaintiff is the best judge of his

requirement and neither the tenant nor the Court can dictate the landlord, how and in what manner the property owned by landlord is to be utilized by him.

15. Now coming to the aspect of subsequent developments. It is settled position of law, as emerging from the judgments relied upon by the parties that in the proceedings under the said Act seeking eviction, subsequent events and its effect on the relief claimed are material consideration for the purpose of decision at Appellate stage. In the Judgment of Sheshambal (*supra*) relied upon by the Respondent / landlord also, the Hon'ble Supreme Court has observed in paragraph 17 that subsequent events having bearing on the right to seek relief can not be shut out from consideration and the Court is expected to 'examine the impact of such subsequent development' on the right to relief and if necessary, mould the relief suitably so that the same is tailored to the situation on the date of grant of relief.

16. As held in the case of Gaya Prasad (*supra*), development in the lives of landlord can not be expected to come to a standstill during pendency of eviction proceedings, especially in view of delay in legal system. There can be myriad of subsequent developments and situations. Therefore to decide the impact of subsequent development, it is obvious that such effect has to be seen in the facts of each case and no straight jacket formula can be adopted. It is beyond dispute that unless the requirement is completely eclipsed / extinguished, suit for eviction can not be dismissed. It is material to note that when the suit was decreed, the pleadings were duly amended and the requirement as pleaded was established. Plaintiff was alive at that time and daughter Charulata was unmarried.

17. In Mehmooda Gulshan (*supra*), the Hon'ble Supreme Court while considering the aspect of bona-fide requirement under Section 11(1)(h) of Jammu and Kashmir Houses and Shops Rent Control Act, 1966 (which is *pari materia*), it is held that non-examination of member of the family who intended to do business cannot non-suit the landlord when otherwise genuine need is established. In the present case, the requirement is pleaded for himself to work as estate broker and for tailoring business of daughter. It was duly established. This case squarely applies and supports the Petitioners.

18. In the case of Nidhi (*supra*), in a recent judgment, Hon'ble Supreme Court has held that the landlord alone is to decide about what he wants to do with the property and marriage of the landlady would not automatically extinguish her bona-fide need. This observation and principle of law squarely applies to the present case, where landlord had claimed possession for requirement of his daughter for doing tailoring business. Applying this principle, it can be safely concluded that non-examination of daughter Charulata cannot be taken as fatal to the requirement pleaded.

19. In Kamleshwar Prasad (*supra*), the Hon'ble Supreme Court has held that in case of subsequent death of landlord, the bona-fide need for starting business

does not lapse merely on death of landlord and the business can be carried on by his family members. Even this Judgment is directly applicable to the facts of the present case, considering the admitted position that the appeal was defended by the other daughters of the landlord. This position is also reinforced by what is recorded in paragraph 18 of the impugned Judgment, where advocate for the landlord has urged that daughter Charulata can still start her business if decree of eviction is confirmed.

20. In view of above position of law discussed, the fact of Plaintiff's death and Plaintiff's daughter Charulata getting married during the pendency of the appeal will not per se amount to completely eclipsing / extinguishing the requirement pleaded. The appeal was defended on merits and it cannot be said that the cause was completely lost to the family members of the landlord.

21. In the aforesaid facts and circumstances and for reasons indicated above, in my considered view, the Appellate Court was perverse in holding that the landlord has not proved the requirement. Hence this is a fit case to interfere.

22. Since I am holding that the requirement proved, it is incumbent that the aspect of comparative hardship is also considered as contemplated under Section 13(2) of the said Act. The availability of premises in possession of the other tenants in Plaintiff's other chawl, cannot have any bearing on the issue, because there is nothing on record to show that the landlord has received premises from other tenants. The premises in occupation of other tenants cannot be considered as available for the use of the landlord.

23. The Trial Court after considering the evidence on record, has given detailed reasons in paragraph 16 of its judgment. I have perused the same. It has concluded that the aspect of comparative hardship tilts in favour of the landlord. Rationing officer examined by Plaintiff has established that Defendant has already shifted his ration-shop elsewhere. It has come on the record that the Defendant/tenant can shift his Kirana shop in one of the premises available elsewhere in Anant Patil Chawl and Ramkuber chawl where he is conducting his ration-shop. Defendant has admitted that he has not made any efforts to find other premises after this suit is filed. Overall, this is case where Plaintiff and his daughter could not use their own shop for their bona-fide requirement because no other place was available. After going through the reasons and available evidence, I do not find any perversity and irregularity in the finding of the Trial Court about comparative hardship that it is in favour of the landlord.

24. In the net result, the Writ Petition is allowed. Impugned Judgment and Decree/Order dated 04.12.2000 passed in Appeal No. 626/1997 is set aside, thereby confirming the Judgment and Decree of eviction passed by the Trial Court.

25. Rule is made absolute in above terms. No order as to costs.

26. At this stage, learned Counsel for the Respondent/tenant seeks stay to

decree of eviction. In fairness, the operation of the present order is stayed for a period of four weeks.