

(2018) 12 BOM CK 0049
In the Bombay High Court
Case No : Writ Petition No. 1567 Of 1998

Ramesh Kashinath Patange And Ors.	Vs	APPELLANT
Sanjiva Padmanabha Bhat And Anr.		RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Order 41 Rule 27, Section 115

Citation : (2018) 12 BOM CK 0049

Hon'ble Judges : M. S. Sonak, J

Bench : Single Bench

Advocate : Uday Bobade, Bharat Punekar, Shriya Gune, Sagar Ambedkar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. The challenge in this Petition is to the judgment and decrees dated 12th August, 1985 and 12th January, 1998 made by the trial Court and Appeal Court ordering the eviction of the Petitioner from the suit premises on the ground that the Respondent-landlords required the same reasonably and bonafide.
3. Mr. Bobade, learned counsel for the Petitioner submits that in the present case, there is clear evidence that the Respondent, who are also the landlord of the adjoining building had let out room Nos. 8, 11, 20, 28 and 32 to some other tenants during the pendency of the proceeding. He submits that from this it is evident that the so called need of the Respondent was neither reasonable nor bonafide. He submits that since this material evidence was not considered by the two Courts in proper perspective, findings recorded by the two Courts on the issue of reasonable and bonafide requirement suffer from perversity and warrant interference.
4. Mr. Bobade, learned counsel for the Petitioner submits that in any case, the issue of comparative hardship was required to be decided in favour of the

Petitioners on the basis of material on record. He submits that since the Petitioners are owners of the adjoining building, and after obtaining possession of almost 5 premises in the said building, they let out such premises. From this, it is evident that no hardship whatsoever will be caused to the Respondent in case decree of eviction were to be refused. Mr. Bobade, however, submits that in contrast severe hardship will occasion the Petitioner in the event they are ordered to be evicted from the suit premises. He submits that the findings of the two Courts on the aspect of comparative hardship are also vitiated perversity and therefore the same warrant interference.

5. Mr. Ambedkar, learned counsel for the Respondents- landlords defends the impugned order on the basis of reasoning reflected therein. He submits that the issue with regard to the rooms in the adjoining building was explained by the Respondents and appreciated by the two Courts. He submits that the Respondents, in case of most of the rooms, never secured any vacant possession. He submits that some of the tenants, even without leave of the Respondent parted with possession of the premises. He submits that considering the size of the Respondent's family as well as the need pleaded and established, the two Courts have returned concurrent finding of fact which are neither contrary to the evidence on record nor vitiated by any perversity. He relies on *Gandhe Vijay Kumar vs. Mulji Alias Mulchand* (2018) 12 Supreme Court Cases 576 to submit that in absence of any illegality or perversity, the High Court may not interfere that concurrent findings of facts. For all these reasons Mr. Ambedkar submits that this Petition may be dismissed.

6. The rival contentions now fall for determination.

7. In the present case, both the trial Court as well as the Appeal Court have recorded concurrent findings of fact that the suit premises are reasonably and bonafide required by the Respondent-landlord. The two Courts have also concurrently answered the issue of comparative hardship in favour of the Respondent-landlord and against the Petitioner-tenants.

8. In *Gulshera Khanam vs. Aftab Ahmad* (2016) 9 Supreme Court Cases 414 the Apex Court has held that the scope of writ jurisdiction under Article 227 of the Constitution of India in rent Act matters is more or less akin to revisional jurisdiction of the High Court. Therefore, while exercising jurisdiction under Article 227 of the Constitution of India, the High Court must confine its inquiry to examine as to whether any jurisdictional error was committed by the first Appellate Court while deciding the first Appeal and not probe into any factual issues again in depth by undertaking appreciation of evidence like a first appellate Court. Therefore, the concurrent findings of Courts cannot be interfered with under Article 227 of the Constitution of India unless the same are perverse to the extent that any judicial person could ever reach to such conclusion or that the findings were against any provision of law or were contrary to evidence adduced. In this case, the Apex Court held that the principles laid down by the Constitution Bench in *Hindustan Petroleum Corpn. Ltd. vs. Dilbahar Singh*,

(2016) 9 SCC 78 and *Surya Dev Rai vs. Ram Chander Rai*, (2003) 6 SCC 675 will apply, particularly when it comes to interference with the finding of fact recorded by the Court below in matters of this nature.

9. In *Gandhe Vijay Kumar* (supra) the Apex Court disapproved the approach of the High Court upsetting concurrent findings on facts with regard to the bona fide requirements of the Appellant by holding that the High Court has misdirected itself and exceeded its jurisdiction in re-appreciating the evidence to test whether the finding of Rent Controller are correct or not. The Apex Court held that the High Court is expected to see only the findings are illegal or perverse in sense that a reasonably informed person will not enter such a finding. The Apex Court held that merely because another view was possible, the High Court, in exercise of its jurisdiction under Section 115 of C.P.C cannot upset factual findings and preferred other possible view. In this case as well, the Apex Court relied upon the Constitutional Bench ruling in *Hindustan Petroleum Corpn. Ltd* (supra).

10. In *Hindustan Petroleum Corpn. Ltd* (supra) the Constitutional Bench has explained the contours of the jurisdiction of the High Court when it comes to interference with findings of fact recorded by the Courts below in such matters at paragraph Nos. 30, 31 and 43 which read as follows:-

30. We have already noted in the earlier part of the judgment that although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, in our view, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction suo motu unless so provided expressly. None of these statutes confer on revisional authority the power as wide as that of the appellate court or appellate authority despite such power being wider than that provided in Section 115 of the Code of Civil Procedure. The provision under consideration does not permit the High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision does not lie under these provisions to bring the orders of the trial court/Rent Controller and the appellate court/appellate authority for rehearing of the issues raised in the original proceedings.

31. We are in full agreement with the view expressed in *Sri RajaLakshmi Dyeing Works* that where both expressions "appeal" and "revision" are employed in statute, obviously, expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose & significance.

43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of

the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity." These principles hold good generally for exercise of revisional power.

11. Since in the present case there are concurrent findings of fact recorded by the Courts below, the contentions now raised by Petitioners will have to be examined within the contours of limited jurisdiction as explained by Apex Court in *Gandhe Vijay (supra)*, *Gulshera Khanam (supra)* & *Hindustan Petroleum (supra)*.

12. The trial Court in his judgment and order dated 12th August, 1985 has noted that the Respondents (Plaintiffs) in terms of the order dated 16th August, 1984 amended the Plaint so as to amplify the ground of reasonable and bonafide requirement of the Respondent and their family members. The learned trial Court has also noted that after the amendment was carried out, the Petitioners neither filed any written statement to contest or deny the amended pleadings nor did they insist upon re-cast of issues or framing of additional issues.

13. At the time when suit was originally instituted in the year 1972, the Respondent had pleaded as that the size of their family comprised 8 members. However, in the year 1984 when the Plaint was amended the size of the family had increased to 12 members. There were averments in the original as well as amended Plaint that the Respondent and their family members reside in a single room tenement approximately 10' x 17 ½' sq.ft. at Narayan Niwas, 34/F, Parel Village, Parel, Mumbai and such premises were totally inadequate for the residence of the Respondent and their family members. The evidence placed on record, both oral as well as documentary was quite consistent with the case as pleaded except that the original Plaintiff (P.W.1) in his evidence admitted that one of his sons Ramesh and his family members shifted to another premises i.e.

Room No. 17, Laxmi Building where incidentally even the suit premises are located. P.W. 1 thereafter admitted that the problem of Ramesh for accommodation no longer survived, but there was the issue of the second son Sanjeev and his family members, who were residing alongwith the original Plaintiff in the premises at Narayan Niwas. The trial Court has noted that the second son Sanjeev who was an Engineer, who was newly married was surely entitled to some additional space and could not be expected to stay in one room tenement at Narayan Niwas along with the parents and other family members. The trial Court also noted that on this aspect there was no cross examination on the part of the Petitioners. The trial Court has also adverted the evidence that there were other family members who were forced to reside in the small room and even at the neighbours house because there was no sufficient space in Narayan Niwas premises. This finding is not merely based upon the evidence of P.W. 1 but also the evidence of Kamlakar Mahimkar, the neighbour at Narayan Niwas who has deposed to this aspect. The trial Court has noted that even this evidence was not dented in the course of cross examination.

14. The trial Court and the Appeal Court have analyzed the evidence of P.W. 1, 2 and 3 on behalf of the Respondents in great details and concluded that the case of reasonable and bona fide requirement has been made out and even the issue of comparative hardship was also required to be answered in favour of the Respondents. The trial Court, has considered in details the contention now raised on behalf of the Petitioners that the Respondents obtained vacant possession of 5 rooms but chose to let them out to some other persons rather than used the same themselves. The trial Court has ruled that the material on record that does not show that any such vacant possession was in fact obtained by the Respondents though in case of some of the rooms there was some evidence to indicate that the persons other than original tenements were in occupation. However, the trial Judge also noted that suits for eviction instituted by the Respondents and that one of the suit has been decreed but the execution of the decree was being obstructed. On a detailed consideration of the evidence on record, findings of fact came to be recorded by the trial Judge and the Petitioners have failed to demonstrate that such finding were vitiated by perversity.

15. The Appeal Court in its judgment and order dated 12th January, 1998 has also once again assessed the evidence on record in great detail but has concluded that the Respondents indeed required the suit premises reasonably and bona fide. The Appeal Court also even into consideration the application under Order 41 Rule 27 of the C.P.C taken out by the Petitioners to effect that the Plaintiff son Ramesh had acquired ownership premises in Padmawati Apartment. However, the Appeal Court, even after taking into consideration the factum of such acquisition, has concluded that the reasonable and bona fide need of the Respondents was not diluted taking into consideration the size of the family and their needs for additional accommodation.

16. The Appeal Court has also once again taken into consideration the contention

in respect of the room Nos. 8, 20, 28, 11 and 32 in Laxmi Building during the pendency of the litigation. The Appeal Court on in-depth analysis has concluded that except for room No. 28 there was no evidence on record to state that Respondent had indeed received the vacant possession which was thereafter transferred in favour of third party. In so far as room No.

28 is concerned, the Appeal Court noted that there was some evidence that vacant possession was received from Mr. Padwal and thereafter the same was transferred to some other tenant. The Appeal Court is however noted that if the area of room No. 28 is to be taken into consideration, then, it cannot be said that the requirement of the Respondents would have been even reasonably fulfilled by retaining the said room No. 28.

17. The Appeal Court has noted that even if some credence is given to the circumstances, son Ramesh has acquired a new apartment and yet another vacant room was acquired from the erstwhile tenant Mr. Padwal, such factor in no manner dilute much less erase bona fide need of the Respondents. In respect of the aforesaid Appeal Court has reasoned that during the pendency of the litigation, the members of the family in the Respondents' family has increased substantially. The Family Court has recorded that even after excluding the requirement of Ramesh, the family of the original Plaintiff comprises his wife, 2 sons and daughter and not to mention the grand children borne in the meantime. Therefore, the Appeal Court on detailed analysis and even after giving credence to the evidence brought on record by the Petitioners by resort to Order 41 Rule 27 of C.P.C has concluded that the requirement of the Respondents is both reasonable and bona fide in the facts and circumstances of the present case.

18. Again there is absolutely no perversity demonstrated in the finding of fact recorded by the Appeal Court as well. This means that there is no perversity demonstrated in the record of concurrent finding of fact by the trial Court as well as the Appeal Court on the issue of reasonable and bona fide requirement of the Respondents. In the absence of any perversity, considering the law laid down by the Apex Court in the case of Gandhe Vijay Kumar (supra), Gulshera Khanam (supra) and Hindustan Petroleum (supra), no case is made out to warrant interference.

19. On the aspect of comparative hardship again, both the Court have written finding of fact and the Petitioners have been unable to demonstrate any perversity in the record of such finding of fact. In fact, the record indicate that there was no proper pleadings raised by the Petitioners on the issue of comparative hardship. That apart, the trial Court has noted that the Respondent was retired person and taking into consideration the number of family members who are living with him, serious hardship would occasion the Respondent if decree for eviction were to be refused. On the other hand, the family of the Petitioners comprised 5-6 members. The Respondent admitted that daughter Asha was residing at Worli and not in the suit premises. The Respondent also admitted that they are owners of a building and the Respondent along with his

wife and one daughter resides in the premises in the suit building. It was the case of the Respondent that suit premises were being used by his sons. The Petitioners also admitted having purchased a building named Shanti Niketan which has 6 flats. It is however admitted that most of these flats are tenanted and proceeding are pending against such tenants. The Petitioners also admitted that they were in use and occupation of one of the apartment in the Shanti Niketan which they purchased in the year 1984. The circumstance that the Petitioners were able to purchase the entire building in the year 1984 and further they have secured eviction of some of their tenants and are in occupation of such premises is quite sufficient to answer the issue of comparative hardship against the Petitioners. The trial Court as well as the Appeal Court have considered the issue of comparative hardship in great details. Both the Courts have considered the financial position of both the parties. The size of the families of the Petitioners as well as the Respondents, the number of premises held by both the parties apart from the suit premises and on basis of such relevant material decided the issue of comparative hardship against the Petitioners and in favour of the Respondents. Again there is absolutely no perversity demonstrated in the record of such concurrent finding of facts so as to warrant interference under Article 227 of the Constitution of India.

20. The Respondents in pursuance of this Court's order dated 17th November, 2016 have filed affidavit in which they have explained the present status of the suit premises. Significantly, there is no response filed by the Petitioners to the said affidavit. Though the record indicates that the same was served on the advocate for the Petitioner way back on 10th July, 2017, in any case, nothing much turns on the said affidavit and the same is not proposed to be taken into consideration for deciding the Petition. The affidavit only notes certain subsequent developments like demolition of the building in which the suit premises were located, on account of its dilapidated condition the execution of development agreement which are made expressly subject to the pending proceeding which are including the present proceeding. Therefore, there is nothing in the said affidavit which is required to be taken into consideration for deciding whether any case is made out to interfere with the impugned orders. Accordingly, nothing contained in the said affidavit to be taken into consideration for the purpose of deciding the present Petition.

21. For all the aforesaid reasons, this Petition is required to be dismissed and is hereby dismissed.

22. The interim order if any, is hereby vacated.