

(2014) 06 BOM CK 0038

In the Bombay High Court

Case No : Civil Revision Application No. 12 of 2014 and Civil Application No. 5088 of 2014

Rasiklal

APPELLANT

Vs

Paraskumar

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 16

Citation : (2014) 6 ALLMR 602 : (2014) 5 BomCR 670 : (2015) 1 MhLj 382

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : V.J. Dixit, Senior Counsel i/b. Mr. L.V. Sangeet, Advocate for the Appellant; P.F. Patni, Advocate for Respondent No. 1, Advocate for the Respondent

Judgement

T.V. Nalawade, J.—Admit. Notice after admission made returnable forthwith. By consent, heard both the sides for final disposal.

2. The proceeding is filed to challenge the judgment and decree of R.C.A. No 10/2008, which was pending in the Court of Principal District Judge, Aurangabad. The Principal District Judge has allowed the appeal filed by present respondent/plaintiff against judgment and decree of Rent Suit No. 17/2005, which was pending in the Court of Civil Judge, Junior Division, Aurangabad. The suit of the plaintiff is decreed on the grounds of bonafide requirement for personal use and subletting by the tenant, the grounds provided u/s 16 of the Maharashtra Rent Control Act.

3. The suit was filed in respect of shop premises, which is part of house No. 3-9-47 (old), 3-9-35 (new) situated at Shahaganj, Aurangabad. The plaintiff is landlord and he has contended that the suit property was given to defendant No. 4-M/s. Ambika Machinery Stores as tenant. It is contended that defendant No. 4 was partnership firm at the relevant time and defendant Nos. 1 and 2 were it's partners. It is contended that defendant Nos. 1 and 2 have inducted defendant

No. 3 as subtenant of the suit premises and defendant No. 3 is in possession of the suit premises as sub-tenant. Defendant No. 3 is son of defendant No. 2.

4. It is the case of landlord that in the past, he was cultivating his agricultural land, but as the agriculture was not profitable, he started business. He has contended that for doing the business, he shifted his residential place from Kasabkheda to Aurangabad. He has contended that he has three sons and one son is in service. He has contended that his one son is doing the business in the name of Maharashtra Sales Corporation in a shop premises which is adjacent to the suit premises. He has contended that he is also doing his business somehow in the same premises. He has contended that the other son is doing his business in the name of Aximo Technologies Maharashtra. It is contended that the said son is required to take two premises on rent basis for doing his business. He has contended that he is doing his business in the name of Darpan Distributors. He has contended that he wants the suit premises for doing business for himself and for his sons, for his family.

5. It is the case of landlord that defendant No. 2 has secured shop premises in the same locality in Kasliwal Building and there, the business of the suit premises can be shifted. It is contended that no hardship will be caused to the defendants, if the order of eviction is made against them.

6. Defendant Nos. 1 to 4 filed joint written statement. They denied that plaintiff has started doing the business and he has shifted his residential place to Aurangabad. They contended that the shop premises in which one son of plaintiff is doing the business is a big premises and there, plaintiff can do his own business. They admitted that there is a board of Darpan Distributors, the shop of plaintiff, on the premises of his son. They denied that plaintiff is doing the business in such name. They contended that other son of the plaintiff has his own premises and there, plaintiff can do the business.

7. It is the case of defendants that the suit premises is the only premises available to them for doing the business and it is the only source of livelihood for them. They have contended that since 1968, they are doing the business in the suit premises and they have acquired goodwill of the business there. Defendant No. 2 has admitted that two shop premises are taken in other building, but he has contended that the said business in the name of Akshai Agency is being done by Jitendra Shah and Rajanben Shah as partners (son and wife of defendant No. 2). It is contended that defendant No. 3 is living separate from his mother and brother and defendant No. 3 has no alternate premises.

8. The defendants have denied the case of subletting. They have contended that initially Lalitaben, Manjuben, Madhukaben and Raochond Lakhani Shah were partners of defendant No. 4 concern and defendant No. 3 became partner of this concern in the year 1998. It is contended that it is the defendant No. 2, who was paying the rent initially and afterwards, defendant No. 3 started paying the rent.

9. Issues were framed on the basis of aforesaid pleadings. The decree only on

two grounds is given. Both the sides have given evidence. The Trial Court had held that the ground of bonafide requirement is not proved. The Trial Court had held that plaintiff proved the ground of subletting. But the Trial Court dismissed the suit by holding that defendant No. 1 was unnecessarily made party and the suit is bad for misjoinder of party.

10. The evidence, only on the two grounds, needs to be seen and the reasoning given on the two grounds only needs to be seen in view of the aforesaid circumstances. Plaintiff has given evidence as per his case. Plaintiff has examined one witness Nitin in support of aforesaid contentions. In the written statement, defendants have admitted that on the shop of son of plaintiff, there is one more Board of Darpan Distributors. Plaintiff has given evidence that he is doing the business in the name of Darpan Distributors. He has produced the relevant record about the business. The licence issued to plaintiff for his shop is produced by him. Separate licence is issued to his son, who is doing business in the name of Maharashtra Sales Corporation in the same shop. The record like sales tax certificate issued in the name of his son Sudesh is also produced. Bill issued to witness PW 2-Nitin by plaintiff in the name of his shop is produced as Exh. 56. It is already observed that defendants have admitted that there is the name on Board of shop "Darpan Distributors" on adjacent shop and so, the aforesaid evidence has created clear probability that plaintiff is now doing business in the name of Darpan Distributors. Defendant No. 2 has tried to deny this admitted fact in the evidence.

11. Plaintiff has given evidence that his other son Rupesh was required to take two premises on rent basis at two places for his business which is being done in the name of Aximo Technologies. His evidence shows that on the date of suit, his son was required to pay the rent of Rs. 5800/- per month when plaintiff is receiving hardly Rs. 900/- per month from the defendants as the rent of suit premises. Plaintiff has given evidence that he and his sons want to use the suit premises for their business and he wants to see that all the family members do their business in the same building.

12. In the cross examination of plaintiff, it is brought on the record that Rupesh, son of plaintiff, purchased a new premises in the year 2006 and there he is doing the business. Copy of the sale deed of that premises is produced at Exh. 34. It appears that after filing of the present suit, Rupesh purchased a flat of the area of hardly 500 Sq. Fts. and there he is living and also doing his business. Surprisingly, the defendants have contended that plaintiff can shift there and do business there also. This circumstance shows that after filing of suit, Rupesh was required to purchase the premises as he had no premises for doing the business. This circumstance supports the case of plaintiff of bonafide requirement for personal use.

13. The District Court has held that the aforesaid evidence is sufficient to prove the bonafide requirement of plaintiff and the members of the family of the plaintiff and they want premises for doing the business. There is the evidence of

plaintiff that he wants to see that he and his sons do the business in the same building. This desire of the plaintiff needs to be kept in mind while appreciating the rival cases.

14. The defence of the tenant that the sons of plaintiff are doing the business at other place and plaintiff can shift there and they can do the business in different premises, is not acceptable. In the case reported as S.R. Babu Vs. T.K. Vasudevan and Others, , the Apex Court has laid down that once it is found that landlord requires additional accommodation for his personal use, the landlord becomes entitled to use it to best suit his requirement. In the present case also, landlord has proved the bonafide requirement of the suit premises for his own use and for the use of his family members.

15. In the case reported as Ragavendra Kumar Vs. Firm Prem Machinery and Co., , the Apex Court has laid down that landlord is the best judge and has complete freedom in such matter. In this reported case, even when other own premises were available to landlord, Supreme Court held that it is up to the landlord to decide which premises is suitable to him. Reliance was placed by the learned counsel for the applicant on the case reported as Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others, . The facts of this case were totally different. It cannot be disputed that if after filing of the suit, the requirement of the landlord has totally eclipsed, eviction order cannot be made in his favour. The facts of the present case are totally different. In the same case, the Apex Court has referred the case reported as Gaya Prasad Vs. Sh. Pradeep Srivastava, . In this case, the Apex Court has observed that the landlord is required to face hardship due to tardy process of law. In the case cited by the learned counsel for the applicant and also in Gaya Prasad's case, it is held that ordinarily the need of the landlord on the date of suit needs to be considered. The landlord cannot be expected to sit idle and not start his business and make progress only because he has filed the suit for getting the possession. In view of the observations made by the Apex Court, this Court holds that the circumstance like purchasing a flat by son of plaintiff for residence purpose and for business purpose cannot be used against the plaintiff, but this circumstance gives corroboration to the case of plaintiff.

16. On availability of alternate premises to the defendants and on the point of greater hardship, the evidence given by defendant No. 1 is not at all convincing. The evidence is not sufficient to discharge the burden which is on the tenant to prove that greater hardship will be caused to him if the order of eviction is made. The evidence of defendant No. 2 shows that 7 to 8 years prior to his deposition i.e. few years prior to the date of suit, he took two premises of the size of 22 x 22 sq. ft. for business. He has also admitted that he has built his own house. His evidence shows that he did not search for other premises for shifting the business from suit premises after learning about the needs of the landlord from the present suit. The evidence shows that the two shop premises acquired by the defendant No. 2 are in the same commercial locality and more constructions are

going on in the locality for the purpose of business. His evidence that his wife and other son are doing business in the same locality at different place and the admission given by him that he has taken two premises, this Court holds that there is sufficient evidence to prove that no hardship will be caused to the defendants if the eviction order is made against the defendants.

17. For proving the case of subletting, there is oral evidence of plaintiff. There are also admissions in the written statement to the effect that defendant No. 3 is doing business at present in the suit premises. Exh. 45 is the lease document under which defendant No. 4 started doing business in the suit premises. This document shows that Shankarlal Shah (defendant No. 1) and Kachan L. Shah were partners of defendant No. 4 concern in the year 1966 when the premises was given on rent basis. Admittedly, defendant No. 1 was not family member of defendant No. 2. Defendant No. 3 was not partner of this firm. The admission given by defendant No. 2 shows that the partnership of 1966 is not in existence and defendant No. 3 is doing the business in the suit premises as the sole proprietor.

18. In the case reported as Mohammedkasam Haji Gulambhai Vs. Bakerali Fatehali (D) By Lrs., when the facts were similar it was held by the Apex Court that giving possession to other by previous partnership firm amounts to subletting. Thus, the plaintiff has proved the ground of subletting and District Court has considered this evidence in proper perspective. Reliance was placed by the learned counsel for the defendants on the cases reported as Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and Others, and Dipak Banerjee Vs. Lilabati Chakraborty, . It was submitted on the basis of observations made in these cases that defendant No. 3 is son of defendant No. 2 and it cannot be said that the possession of defendant No. 3 is exclusive. This submission is not at all acceptable in view of the facts and circumstances of the present case. The relevant facts are already discussed.

19. The discussion made above shows that the learned Principal District Judge has not committed any error in giving decision in favour of landlord on aforesaid two grounds. No irregularity or illegality is found in the decision of Principal District Judge. It can be said that the learned Judge of the Trial Court had committed grave mistake in not giving decree even when it came to the conclusion that there was subletting. The reasons given for refusing the decree is not at all acceptable as it is not legal. No merits are found in the revision.

20. In the result, Civil Revision Application is dismissed. Time of six weeks is given to the applicant as there is vacation to Supreme Court till 1.7.2014.

21. In view of dismissal of Civil Revision Application, Civil Application stands disposed of.