

(1983) 02 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 1903 of 1981

Sawliram Balaji Dighe

APPELLANT

Vs

Satyabhamabai Kisanrao (Smt.) and Others

RESPONDENT

Date of Decision : 17-02-1983

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3), 13(1), 13(2)

Citation : (1983) 2 BomCR 211

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : K.J. Abhyankar, for the Appellant; V.Z. Kankaria, for the Respondent

Judgement

S.C. Pratap, J.—This petition under Article 227 of the Constitution arises out of original proceedings instituted by the plaintiff against the defendants for possession of the suit premises under the provisions of the Bombay Rent Act.

2. Suit for possession was filed on the ground of default in payment of rent, bona fide personal requirement and nuisance and annoyance. The defendants denied the suit claim. The trial Court held against the plaintiff on the question of nuisance and annoyance but held in favour of the plaintiff on the question of claim for possession on the ground of arrears of rent as also on the ground of bona fide personal requirement of the suit premises. Consistent therewith, the trial Court decreed the suit. In appeal against the said decree, the learned Assistant Judge hearing the same reversed the findings of the trial Court on the question of arrears of rent as also on the question of bona fide personal requirement of the suit premises. It was found that the defendant's case clearly fell outside the provisions of section 12(3)(a) of the Rent Act and so far as section 12(3)(b) of the Rent Act was concerned, the defendants were held to have fully complied therewith. On the question of bona fide personal requirement, it was found that the plaintiff himself had not personally entered the witness box to support the said claim. But what is more important, it was

also found that the plaintiff had, during the pendency of the proceedings, received actual possession of two rooms from another tenant, one Patel. The claim for bona fide personal requirement was also consequently negated. Consistent with these findings, the learned Assistant Judge allowed the appeal, set aside the decree passed by the trial Court and dismissed the suit. Hence this petition by the plaintiff.

3. Now taking up first the claim for possession on the ground of arrears, I find the reasoning and conclusion of the learned Assistant Judge unassailable. Immediately after the receipt of the suit notice dated July 20, 1976, which claimed arrears from 1st October, 1975 till 30th June, 1976 (i.e. for a period of nine months), the tenant sent two money orders to the plaintiff, one for Rs. 300/- and the other for Rs. 250/-, thus making within a period of one month of the receipt of the suit notice payment of Rs. 550/- to the landlord. The contractual rent of the suit premises was Rs. 25/- per month for the residential portion and Rs. 30/- per month for the one room used by the defendants as flour mill. In addition, the permitted increases came to Rs. 6/- per month. Thus, the total rent including permitted increases was Rs. 61/- per month. The arrears being for a period of nine months, the total amount due would be Rs. 549/-. The tenant here had admittedly sent to the landlord within one month of the receipt of the suit notice Rs. 550/-. Thus, the entire demand had been fully satisfied.

4. It is, however, contended on behalf of the landlord that the suit notice also contained a demand at the rate of Rs. 10/- per month for scavenging and other charges. Now, though such a demand was made in the suit notice, the said demand was clearly unsustainable. Nothing has been shown to establish that the said demand was in pursuance of an agreement between the parties or that the said demand had been earlier made and voluntarily accepted by the tenant. The said demand was not a part of any contract. The tenant was not bound to comply with such a demand. The entire legal demand of the landlord viz., the entire rent and all the permitted increases had been fully met with by the tenant within a period of one month of the receipt of the suit notice. There was thus no question of there being any surviving cause of action in favour of the landlord and against the tenant for possession on the ground of arrears.

5. That apart, here is also a case where the tenant had within a period of one month of the receipt of the suit notice made not one but two applications for fixation of standard rent of the suit premises. Still further, even before issues were settled in the suit, the tenant here had deposited the entire further amount (and indeed something more) due till that day. Once the suit notice demand had been complied with, there was no occasion for the landlord to even so file a suit for possession on the ground of arrears. All the arrears had been fully satisfied much prior to the filing of the suit. However and even so, if the landlord chooses to file a suit, then surely one cannot fasten upon the tenant in such a case the liability to deposit rent in Court. But even if one were to assume such liability nevertheless arising against the tenant, the tenant here had in fact deposited

even further amounts in Court and as indicated even prior to the settlement of the issues, the tenant had deposited the entire amount and something more due till that date. If such be the circumstance and if the Appellate Court had, on the basis of these eloquent facts, found the claim for possession on the ground of arrears to be unsustainable, no case for interference with such prominently justified finding can be said to be made out in this petition under Article 227 of the Constitution. I am in full agreement with the reasoning and conclusion of the learned Assistant Judge on this aspect of the case.

6. Coming next to the claim for possession on the ground of bona fide personal requirement, I do not think it is necessary in each and every case for the landlord himself to personally enter the witness box to depose to the factors which, according to him, would go to constitute the ground of bona fide personal requirement within the meaning of section 13(1)(g) of the Rent Act. This is not a case of where the landlord wanted the suit premises only for himself individually as such. The claim for possession on the ground of bona fide personal requirement was legitimately speaking a claim made on behalf of himself and all the members of his family consisting of his wife, his sons, his daughters and his daughter-in-law. If such be the nature of the claim, it would not be proper to dismiss the said claim in limine on the ground that the landlord has not examined himself personally and has instead led in this behalf the evidence of his own son who is a member of his own family residing with him and who is in the know of all the factors and circumstances that would go to constitute the claim for possession u/s 13(1)(g) of the Rent Act. I would, therefore, not agree with the virtually summary and in limine dismissal by the learned Assistant Judge of the landlord's claim for possession u/s 13(1)(g) of the Rent Act on the only ground that the landlord has not personally entered the witness box but has instead led evidence of his son who is a member of his family and is personally aware of all the facts and circumstances of the case in support of the claim u/s 13(1)(g) of the Rent Act.

7. Once we reach the position that the plaintiff is entitled to ask the Court to consider the evidence led on his behalf on the question of bona fide requirement and relative hardship, then summary dismissal of his claim for possession on that ground on the only basis that he has himself not entered the witness box would not be justified. Coming then to the merits of the said claim u/s 13(1)(g) of the Rent Act, there is ample satisfactory evidence on the record in support thereof. At the time when the suit was filed, the plaintiff and his family were in possession of only two rooms on the first floor of the suit property and one other room on the ground floor. The number of members in the family of the plaintiff, which included two couples, was nine. Thus, nine members in the family inclusive of two couples having only two small rooms on the first floor and one room on the ground floor would certainly reasonably and bona fide need additional premises. I understand that out of the two rooms on the first floor, one is used as kitchen. This fact further enhances reasonable and bona fide requirement of the plaintiff. Besides, it is not essential for one coming with a claim u/s 13(1)(g)

of the Rent Act to establish compelling necessity, though, of course, it is also not enough to establish a mere desire. Considering the facts and circumstances of the case, the number of members in the family of the plaintiff and the premises in the occupation of the plaintiff, inference in favour of reasonable and bona fide requirement would indeed be irresistible. I would, therefore, agree with the conclusion of the learned trial Judge in favour of the plaintiff in this behalf.

8. The plaintiff thus fulfils the first basic ingredient in a suit of possession u/s 13(1)(g) of the Rent Act. The statute, however, imposes yet another condition and that relates to comparative or greater hardship. u/s 13(2) of the Rent act, no decree for eviction shall be passed u/s 13(1)(g) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. Further, under the latter part of section 13(2), where the Court satisfied that no hardship would be caused either to the tenant or to the landlord by passing decree in respect of a part of the premises, the Court shall pass decree in respect of such part only. Thus, once a finding in favour of the plaintiff on his reasonable and bona fide requirement is reached, there must arise for consideration of the Court the issue of hardship in terms of section 13(2) of the Act.

9. On this aspect, materials on record indicate that apart from the two rooms on the first floor and the one room on the ground floor which were in the possession of the plaintiff when the instant suit was filed, the plaintiff received, during the pendency of this suit, possession of two more rooms from one Patel, another tenant of the plaintiff. These two rooms are situated on the second floor of this very suit property. Thus, during the course of the instant litigation, the plaintiff has acquired two more rooms. Mr. Kankarla, learned Counsel for the defendant, contends that in addition, the plaintiff's son has also acquired yet another office premises. However, since there is no supporting evidence on record, I would exclude this circumstance from consideration. The net result is that the plaintiff is now in possession at least of five rooms in all, one on the ground floor, two on the first floor and two more on the second floor of the suit property. The defendant, on the other hand, is in possession of three rooms for residence and one room which she is using for the purposes of a flour mill. The defendant's family consists of herself and her two sons. Of course, the defendant also contended that one Balu who is her son from her first husband also resides with her in the suit premises. But there being no satisfactory material in support thereof, the said circumstance has been rightly excluded from consideration by the courts below. Thus, the family of the defendant consists of herself and her two sons. If one considers the respective families of the plaintiff and the defendant and the respective premises in their possession, I do feel this to be a case where the defendant will have to part with at least a part of the suit premises in favour of the plaintiff. If that is not done" then the issue of greater hardship will tilt in favour of the plaintiff and if that is done viz., if a part of the suit premises is directed to be handed over to the plaintiff, then and thereafter

no hardship would be said to be caused either to the defendant or to the plaintiff. Decree for part of the suit premises would balance the issue of hardship and thereafter result in a position of no greater hardship to either of the parties.

10. All things considered I would pass a decree in favour of the plaintiff in respect of one room out of the suit premises the said room being an independent room just across the passage, on the other side whereof are situated the other three rooms forming part of the suit premises in the possession of the defendant. I must say that it is not always an easy task to decide the issue of greater, comparative and/or equal hardship. Courts have to ultimately consider the facts and circumstances emerging from the record and reach a conclusion which seeks to do justice to both the sides. It may be that parting with possession of a part of the suit premises may cause some inconvenience and even hardship to the defendant. It may also be that giving to the plaintiff possession of one room may still not extinguish his need for additional premises. But then the statute has sought to meet the needs of both the landlord and the tenant and has sought to strike as best as possible a via media between the two. If the ultimate decree passed strikes a just balance between the landlord and the tenant, the end result must be held to be one that fairly and squarely meets the object of the statute. Bearing these factors in mind, I would pass a decree in favour of the plaintiff in respect of a part of the suit premises.

11. So far as standard rent of the premises remaining with the defendant is concerned, it would follow that it cannot be the same as the rent of the entire suit premises. After the plaintiff obtains possession of one room as here decreed, the rent of the remaining three rooms would certainly be less. It would normally be for the parties to move by appropriate proceedings and get standard rent of the remaining premises fixed. However, on this aspect, the learned Counsels Mr. K.J. Abhyankar and Mr. V.Z. Kankaria agree that the standard rent of the premises remaining with the defendant should be fixed at Rs. 50/- per month plus permitted increases, i.e. Rs. 30/- per month plus permitted increases for the flour mill room and Rs. 20/- per month plus permitted increases for the remaining two rooms. Considering the location and the nature of the premises and the earlier rent in respect of the suit premises, this seems to be fair and reasonable. I would, therefore, fix the same as standard rent of the premises remaining with the defendant.

12. In the result, this petition is partly allowed. The decree passed by the Appellate Court on February 16, 1981 is set aside. Plaintiff's suit for possession is decreed so far as one room from out of the suit premises is concerned, the said room being an independent room situated just across the passage, on the other side whereof are situated the other three rooms (in one of which is situated the defendant's flour mill) forming part of the suit premises in the possession of the defendant. Plaintiff's claim for possession of the remaining suit premises is dismissed. The standard rent of the remaining premises with the defendant is fixed at Rs. 50/- per month plus permitted increases i.e. Rs. 30/- per month plus

permitted increases for the flour mill room and Rs. 20/- per month plus permitted increases for the remaining two rooms.

13. Mr. Kankaria, learned Counsel for the defendant, states that he would ask the defendant to hand over possession of the decreed one room to the plaintiff without any undue and without compelling the plaintiff to take out execution proceedings.

14. Rule earlier issued on this petition is made partly absolute in terms aforesaid. In the circumstances of the case, there will be no order as to costs throughout.