

(2002) 08 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 3753 of 1991

Shankar Pandurang Prabhale since deceased by his heirs and
Others

APPELLANT

Vs

Vinaychandra Vrujlal Shaha and Another

RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

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

Citation : (2003) 1 ALLMR 235 : (2003) 1 BomCR 638

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : A.K. Abyankar, for the Appellant; N.B. Shah, for the Respondent

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception to the judgment and decree dated July 6, 1991 passed by the IIInd Additional District Judge, Satara in Regular Civil Appeal No. 447 of 1988. The premises in question are situated in Municipal House No. 671 of Guruwar Path, Satara. The respondent No. 1 purchased the said property some time in the year 1977 with a view to enjoy the same for the personal use and occupation. It is on that premise notice was issued to the original petitioner-tenant terminating his tenancy in the year 1980. In spite of that notice petitioner did not vacate the suit premises. As a consequence of which the respondent No. 1 instituted a suit before the Court of Joint Civil Judge, Junior Division, Satara, on the ground of reasonable and bona fide need and requirement for himself and for his family members. Besides that ground the suit for possession was also instituted on the ground of tenant having caused damage to the suit property. While the said suit was pending, it is stated that, there was partition in the family of the plaintiff in the year 1984 and in that partition the suit property came to the share of the respondent No. 2 herein. After that development the plaint was amended and the respondent No. 2 was impleaded as plaintiff No. 2. Besides impleading the plaintiff No. 2, consequential amendments were carried out. It is averred that the property was purchased on behalf of the joint family members and the suit for

possession was instituted for the reasonable and bona fide requirement of the family and since the respondent No. 2 has become the owner of the property, the suit property would be now required for the personal use and occupation of respondent No. 2 for his residence and business purpose. It is not in dispute that the original owner had let out the suit premises to the petitioner for business purpose and the petitioner was carrying on Kirana shop in the said premises. The trial Court on analyzing the evidence on record however, negated the ground regarding the reasonable and bona fide requirement. Accordingly, the suit was dismissed by judgment and decree dated 13-7-1988. Against this decision the respondents carried the matter in appeal before the District Court. The District Court has reappreciated the evidence on record and has reversed the findings recorded by the lower Court and instead found that the respondents have made out case of reasonable and bona fide requirement of the suit premises. Even on the issue of the comparative hardship, Appellate Court has answered the same in favour of the respondents. Accordingly, the Appellate Court decreed the suit and ordered that the petitioner-tenants to hand over possession of the suit premises to the respondents. It needs to be mentioned that the decree for possession has been granted by the Appellate Court in favour of the respondents only on the ground of reasonable and bona fide requirement. It is this decision which is under challenge before this Court.

2. According to the learned Counsel for the petitioners, suit was originally filed by the respondent No. 1 and in that suit no mention was made about the fact that the suit premises were purchased on behalf of the joint family. It is, therefore, argued that the suit was filed only by the respondent No. 1 setting up requirement for himself and for his family and that plea as pressed into service in the plaint is unavailable to the respondent No. 2 merely because he has been impleaded as plaintiff No. 2 in the suit. It is contended that the plaintiff No. 2 was obliged to assert about his personal requirement both for residence and for business and also establish that before the Court which has not been done in this case. Learned Counsel further contends that the material on record clearly establishes the position that the respondent No. 2 had other accommodations available to cater to his requirement of business and in such a situation no decree for possession can be ordered. It is contended that in so far as the requirement for residence is concerned, respondent No. 2 has admitted that after institution of the suit he has constructed bungalow admeasuring 1800 sqft. It is, therefore, contended that the respondent No. 2 has neither succeeded in establishing the requirement for his residence or for the proposed business. Learned Counsel further contends that the record would clearly indicate that the respondent No. 2 was financially well off and was capable of purchasing and acquiring other premises. Whereas, the petitioners had no means to do so and, therefore, the issue of reasonable and bona fide will have to be answered against the respondents. Learned Counsel further contends that in so far as the issue of comparative hardship is concerned been that finding will have to be reversed because it has come on record that the petitioners have no means to acquire

another premises. In these circumstances, it is contended that the decree passed by the Appellate Court requires to be reversed and instead the suit be dismissed as ordered by the trial Court.

3. On the other hand, the learned Counsel for the respondents has contended that the Appellate Court has correctly applied the settled legal position while answering the issues of bona fide and reasonable requirement as well as of comparative hardship in favour of the respondent and no interference with that decision is necessary in exercise of powers under Article 227 of the Constitution of India.

4. Having considered the rival submissions and the materials on record, including the decisions of the courts below, I have no hesitation in observing that this petition is devoid of merits. In so far as the first grievance made before this Court, the Appellate Court has dealt with the same in paragraph No. 10 of its judgment and has rightly noted that after the plaintiff had amended the plaint the defendant did not correspondingly amend his pleadings and virtually admitted the claim of the plaintiff No. 2 who was added as party to the suit. The Appellate Court has, therefore, rejected the said contention and instead preferred to hold that after the amendment of the plaint, the defendant having failed to specifically contest the claim insofar as the plaintiff No. 2 is concerned, the bona fide and reasonable requirement of plaintiff No. 2 cannot be doubted. Accordingly, the plaintiff cannot be non-suited on this count at this stage. It is well settled that when the parties have understood each others case, just as in the present case, and go for trial and allow the evidence to be let in on certain matters in issue then the plaintiff cannot be non suited on the ground of vagueness of pleadings. See *Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others*, , and also *Baba Kashinath Bhinge case*, 1994 Supp. 3 SCC 698 Besides, what is relevant to note is that plaintiff No. 2 entered the witness box and has deposed about his bona fide and reasonable requirement, in so far as the suit premises are concerned. The Appellate Court has analyzed the evidence of plaintiff No. 2 and has found that the same can be accepted and the issue needs to be answered in his favour. The Appellate Court, has applied the correct tests while answering the issue of bona fide and reasonable requirement, for the landlord-plaintiff wanted the same in view of his expanding business of automobile and spare parts, in paragraph No. 16 of its judgment. The Appellate Court has taken note of the fact that the premises acquired by the plaintiff No. 2 are near the suit premises; and he was presently doing business therein was on rental basis. The Appellate Court, therefore, proceeds to hold that the fact that the respondent No. 2 was required to take premises on rental basis reinforces the reasonable and bona fide requirement of the respondent No. 2, and therefore, rightly answered the subject issue in favour of the respondent No. 2 . It is well settled that if the landlord is occupying rented premises and expresses his intention to occupy the premises owned by him then there is no reason as to why the courts would doubt the bona fide of the landlord. See *M. Padmanabha Setty Vs. K.P. Papiiah Setty*, . No fault can be found with the said reasoning of the

Appellate Court. It is not possible to even remotely suggest that the conclusion reached by the Appellate Court in this behalf is either perverse or manifestly wrong. The said conclusion is founded on the evidence on record. If that be so, there is no occasion for this Court to reappraise the evidence on record so as to overturn the finding of fact recorded by the Court below. Besides, even if there are some errors here and there in the judgment of the Appellate Court, that cannot be the basis for interfering with the findings of the fact recorded by the final fact finding Court. To my mind, the Appellate Court has rightly analyzed the evidence on record and has observed that the need pressed into service on behalf of the respondent No. 2 for his business was reasonable and bona fide one. It is not necessary for us to examine the requirement with regard to the residence though it was set up by the respondent. The suit premises are being used for business by the petitioner-tenant. If that be so, the findings with regard to the requirement of the respondent No. 2 for the purpose of his business would be sufficient to answer the issue in favour of the respondents and against the petitioners.

5. That brings me to the other vital contention raised on behalf of the petitioner that the premises presently in occupation of the respondent No. 2 for business were sufficient and therefore, the requirement was not reasonable. This submission clearly overlooks the finding of fact that the additional premises were taken by the respondent No. 2 on rental basis since he was not able to get possession of the suit premises as the matter remained pending in the Court. In that view of the matter it is not possible to doubt either the reasonableness or the bona fide requirement of the respondents. The Appellate Court has taken into account the fact that the business of the respondent No. 2 was expanding and he required additional premises coupled with the fact that those premises were on rental whereas the respondent No. 2 wanted the suit premises which were his own. If that be so, the finding of fact recorded by the Appellate Court needs no interference.

6. The next contention is that the petitioners were financially incapable of acquiring other premises whereas the respondents-plaintiffs are well off. Even this aspect has been considered by the Appellate Court. Merely because the landlord is in a position to acquire other premises cannot be the basis for denying the relief of possession when he has succeeded in establishing the ground of reasonable and bona fide requirement. I see no reason to take a different view from the one already taken by the Appellate Court. In the circumstances, I find no fault with the approach of the Appellate Court in answering the issue of reasonable and bona fide requirement against the petitioners.

7. That takes me to the issue of comparative hardship. In so far as this issue is concerned the Appellate Court in para 17 of its judgment has correctly summarized the legal position. By applying that position the Appellate Court has analyzed the materials on record and has found that there is nothing on record to show that the plaintiff had any other accommodation besides the suit premises

to carry on his business. The Appellate Court has also taken into account that the evidence on record clearly indicates that alternative premises were available in the same locality. This conclusion reached by the Appellate Court cannot be doubted. Besides, the Appellate Court has taken into account that the defendant made no efforts to search for the alternative premises at any time. Whereas, the only contention raised on behalf of the defendant was that he was not in a position to acquire alternative premises for which he would be required to spend Rs. 50 to 60 thousands towards deposit and rent of Rs. 250/- per month. The Appellate Court has rightly observed that what is to be seen is whether comparative hardship would be to the plaintiff or to the defendant and mere inconvenience would be of no consequence. The amount of Rs. 50 to 60 thousands even if required to be invested cannot be said to be so exorbitant that a person would not make arrangement for that amount inspite of the impending threat of decree of eviction. Therefore, no fault can be found with either the approach or the conclusions arrived at by the Appellate Court in answering the issue of comparative hardship against the petitioners. That view is consistent with the principles enunciated by the Apex Court in its judgment Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, . In this view of the matter, I see no reason to take a different view.

8. In these circumstances, this writ petition fails and accordingly it is dismissed with costs throughout.

Petition dismissed.