
(2008) 12 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No. 5426 of 1991

Sharadabai Anandrao Durgule

APPELLANT

Vs

Ramchandra Manku Pol and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Citation : (2009) 1 BomCR 577 : (2009) 2 MhLj 225

Hon'ble Judges : Mohta Anoop V., J

Bench : Single Bench

Advocate : N.V. Walawalkar and G.H. Keluskar, for the Appellant; M.V.S. Gokhale, for the Respondent

Final Decision : Allowed

Judgement

Mohta Anoop V., J.—The petitioner-Landlord-plaintiff being aggrieved by the reversal order passed by the Additional District Judge, Kolhapur whereby the respondents tenant's appeal is allowed and the petitioner's suit for possession is dismissed on all counts i.e. reasonable and bona fide need, greater hardship and the standard rent.

2. The petitioner is the owner of the part of the suit bearing Original City Survey No. 512/Kh situated at Kolhapur under a Will executed by one Mr. Baburao Kushappa, the Original owner of the said building. One Mr. Ramchandra Manku Pol, now deceased, was the tenant in the ground floor premises of the said part of the house (for short, "the suit premises"). The petitioner required the said suit premises for her bona fide use and need and occupation for starting a Kirana shop or a hotel. She is widow. She terminated the tenancy accordingly on 31/7/1978. The petitioner filed Suit No. 912 of 1978 for possession of the suit premises. The suit was resisted. The suit was decreed by an order dated 27/4/1987, on all counts. However, the District Court of Kolhapur in Regular Civil Appeal No. 172 of 1987 allowed the appeal and reverse the said decree of possession and dismissed the petitioner's suit.

3. The petitioner who is aged 71 years widow have two grandsons and one granddaughter from elder son, Shri Subhash and his son Abhijit is a Auto Bike Mechanic. Therefore, requirement for her own business alongwith other members of the families including two sons and two grand-sons just cannot be overlooked. The requirement to accommodate such members just cannot be overlooked. The grand mother at this age with financial and physical help of family wants to start some business, I see there is no reason to not consider her case, specially when the property at ground floor is situated in the midst of the city. The desire of starting business cannot be said to be dishonest or insincere. There is ample material to support her bona fide, reasonable and genuine need of the premises. The Appellate Court below erred in law to deny the rights to occupy premises for her bona fide and reasonable need, when she has proved that the need is both genuine and reasonable. In the present facts and circumstances of the case, I am also convinced that the same is proved and the decree of eviction must follow on this ground of bona fide need.

4. It is difficult to accept the case of respondent tenant that he would suffer greater hardship. The landlady/landlord is the best Judge of his/her requirement. The tenant cannot dictate that how they should adjust their need. There is nothing on record to show that the landlady's need is dishonest. The bona fide and reasonable requirement as stated and proved in the present case itself, in my view is sufficient to grant the decree on that ground. Motor Cycle House and Metro Cottage Industries and Shri Rajnikant Tarachand Damani Vs. Smt. Kamalabai Dattatraya Kale, Shri Maheshwar Dattatraya Kale, Shri Madhukar Dattatraya Kale and Shri Narottamdas Velji Hindocha, and Narayan Rajaram Alchetty Vs. Balamma Baburao Shirekam and Another, .

5. The tenants long occupation and acquisition of the goodwill in the said premises should not prevail over the rights of landlord to occupy his or her premises. In the present case as noted, the petitioner is staying in the said building and required the premises of the ground floor in the same building just cannot be overlooked. The submission that she can start her business at any other place and the tenant is ready to provide the suitable accommodation at his costs to the landlord, is in no way can be the ground to hold that the hardship would cause to the tenant, as his liquor business would be required to be shifted from the said premises. As noted in Motor Cycle House and Metro Cottage Industries, Pune (Supra) that once the landlord has placed on the record the material evidence to support his bona fide and reasonable need and as it is proved, the question of hardship normally tilts in favour of the landlord. In the present case, it is in favour of the landlord. In view of the above facts and circumstances, the reasoning given by the lower Appellate Court on this ground, is also, therefore, incorrect.

6. Therefore, I am of the view that the plaintiff landlady has proved the reasonable and bona fide requirement of the premises and she would suffer greater hardship if the decree for the possession is not passed and therefore,

plaintiff-petitioner entitled for the possession of the suit premises as prayed and as granted by the trial Court by order date 27/4/1987. The Apex Court in Julieta Antonieta Tarcato Vs. Suleiman Ismail, , has observed another facet of bona fide need as under:

The appellant being the owner of the suit premises, her need being bona fide and reasonable, it would be unfair to compel her to share the accommodation in another premises with its co-owner.

7. With regard to the standard rent, the reasoning given by the trial Court as held that the agreed rent of Rs. 100/- is the standard rent of the suit premises is correct. The Appellate Court held that the respondent-defendant was paying the rent and as given as per oral evidence of defendant No. 1 as per Rs. 100/- last 30 years and never disputed this and I see there is no reason to disturb the agreed rent of Rs. 100/- per month as a standard rent as ordered by the trial Court. There is no perversity to hold agreed rent as a standard rent, specially in the present facts and circumstances of the case. Admittedly, the tenant did not file the separate prayer for fixing standard rent as per the provisions of the Bombay Rent Act, the reasoning given, therefore, by the Appellate Court fixing the standard rent at Rs. 55/- p.m. as it was fixed in the year 1970, is incorrect.

8. Therefore, taking all this into account, the impugned order dated 31/8/1991 passed by the 5th Additional District Judge, Kolhapur is quashed and set aside and the impugned order and judgment dated 27/4/ 1987 passed by the 2nd Jt. Civil Judge, Junior Division, Kolhapur is maintained.

9. In the result, the petition is allowed in terms of prayer Clauses (b) and (c). Rule made absolute. No order as to costs. The learned Counsel appearing for respondent Nos. 1 and 2, seeks stay of this judgment. Considering the facts and circumstances of the case, the effect and operation of this judgment is stayed for two months on the condition that there shall not be any third party right and interest of whatsoever nature be created by the respondents and parties in possession.