

(2003) 09 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 2234 of 1990

Shri Mahadeo Shriniwas Naik

APPELLANT

Vs

Ratnanchand Anandram Doshi

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 1 ALLMR 100 : (2004) 4 BomCR 415 : (2004) 2 MhLj 191 : (2004) 2 MhLj 190

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : Suhasini Mutalik, for the Appellant; V.S. Gokhale, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—A suit for eviction filed in 1980 by the petitioner was decreed on two grounds by the Small Causes Judge, Pune. The learned trial Judge in his judgment dated 30.7.1987 held that the ground that the premises had been unlawfully sub-let was established and that the landlord required the premises reasonably and bona fide for himself and the members of his family. The judgment of the trial Court has been reversed in appeal by the Additional District Judge, Pune, 22.3.1990. The landlord is before this Court in these proceedings under Article 227 of the Constitution of India.

2. The premises in this case consist of a property bearing Municipal house No. 233-A, situate at Shivajinagar, Pune. The landlord had been conducting the business of a hotel in the suit premises which consist of a shop. Under a rent note dated 17.7.1970, the business of the hotel came to be transferred to the tenant together with the tenancy in respect of the premises. The petitioner instituted the suit for eviction in 1980 on several grounds, these being: (i) default in the payment of rent; (ii) non-user of the premises; (iii) unlawful sub-letting; and (iv) the bona fide requirement of the landlord. Evidence was adduced before the trial Court. The suit was decreed by the Small Causes Judge on two

counts, viz., that the premises had been unlawfully sub-let by the original tenant and on the ground of the bona fide requirement of the landlord. Against the judgment of the trial Court, an appeal was filed by the landlord which came to be allowed by the Additional District Judge, Pune.

3. Insofar as the ground of the bona fide requirement of the landlord is concerned, in para 4 of the plaint, it was stated that the landlord required the premises for himself and for the members of his family meaning particularly, his sons. The landlord asserted that the premises were required for the purpose of his own business and that as a result of the inadequacy of space, it has not been possible for him to expand his business. In support of the case of the landlord, evidence was tendered of two of his sons, Prabhakar and Pravin. The learned trial Judge noted that one of the sons of the landlord had deposed that his brother carried on the business of the sale of bakery products in the adjoining premises. He produced a copy of the licence of the premises under the Shops Act. According to him, there were 16 members in the family and the premises in question were required for the purpose of the expansion of the business. The second son of the landlord, Pravin also deposed in support of the requirement. He stated that he was carrying on business from the adjoining premises from which he derived income of Rs. 100/- to Rs. 125/- each day. He stated that this income was not sufficient for the family and that he intended to expand his business. Considering the evidence of these two witnesses P.W.1 and P.W.2, the learned trial Judge held that the premises were required reasonably and bona fide by the landlord for the use and occupation of himself and for the family. Insofar as the question of comparative hardship was concerned, the learned trial Judge held that the aforesaid factor weighed in favour of the landlord. That was because the deceased tenant, defendant No. 1, had entered into a partnership and that partnership had evidently come to an end on the death of one partner. If a decree for possession was refused, the landlord's son who was a young man and wanted to expand his business will suffer considerable greater hardship than if a decree were to be passed.

4. In appeal, the Additional District Judge while reversing the order of the Trial Court relied principally on four circumstances: (i) The evidence of P.W.2 Pravin showed that a decision had been taken to expand the business in 1980. There was no reason as to why when the suit was filed in 1980, this was not pleaded in the plaint. The requirement that the premises were required for the landlord and his sons came only by way of an amendment of the plaint; (ii) Even when the amendment was made, specific details in regard to the need of the landlord's son were not provided. One of the witnesses had admitted that there were separate ration cards for the members of the family and no evidence had been brought on record to establish that the petitioner or his sons were residing at one place or that they were conducting a joint family business; (iii) The notice which was sent by the landlord to the tenant was silent in regard to his bona fide requirement; and (iv) Unless it was established that the existing business of the landlord's son was prospering, thus making the available space insufficient, what

was pleaded on behalf of the landlord would have to be regarded as a mere wish and not a need. No account books have been produced.

5. The learned counsel appearing on behalf of the petitioner urged that the entire approach of the first appellate Court is misconceived, having regard to the principles of law which have been laid down by the Supreme Court in several cases. Counsel submitted that there were sufficient averments in para 4 of the plaint. Those averments together with the evidence of P.W.1 and P.W.2 and the material which was placed on record would adequately have demonstrated that this was a case where the requirement, it was urged, was reasonable, bona fide and not tainted. Counsel submitted that the landlord is the best judge of his own requirement. The fact that the bona fide requirement was pleaded for the first time by an amendment of the plaint and the circumstance that the account books have not been produced on behalf of the landlord was entirely irrelevant to the determination of whether the requirement was really established. On the other hand, the learned counsel appearing on behalf of respondent No. 1 urged that the view which was taken by the first appellate Court ought not to be interfered with in the exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

6. While considering the correctness of the submissions which was urged on behalf of the petitioner, at the outset, it would be necessary to deal with the first ground which weighed with the Addl. District Judge. The learned Judge held that the ground that the landlord required the premises bona fide for his own use and occupation was urged for the first time by an amendment of the plaint. The learned Judge then held that since P.W.2 had stated that the family had decided to expand the business or the first time in 1980, there was no reason why the ground was not mentioned when the suit was filed. Ex facie, in my view, the approach of the first appellate Court suffers from patent infirmity. In *Siddalingamma and Another Vs. Mamtha Shenoy*, , Mr. Justice R.C. Lahoti speaking for a Bench of three learned Judges of the Supreme Court held, in a case which arose under the Karnataka Rent Control Act, 1961 that in a civil case, once the amendments to pleadings are permitted to be incorporated, the correctness of the facts introduced by amendment cannot be doubted solely on the ground that they were not stated in the original petition. On the doctrine of relation back, which generally governs the amendment of pleadings unless for reasons the Court excludes the applicability of the doctrine in a given case, the petition for eviction as amended would be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition. In the present case, once the pleadings were permitted to be amended by allowing the landlord to plead an additional ground, viz., the requirement of his sons for carrying on the business it was, in my view, most inappropriate for the first appellate Court to hold that the bona fides of the landlord's requirement would fail in being established merely because that requirement was not set up in the plaint as originally filed.

7. The other grounds which have weighed with the first appellate Court in reversing the decree for eviction are equally misconceived. The two sons of the landlord Prabhakar and Pravin gave evidence in support of their case. The requirement of the landlord was sufficiently pleaded in para 4 of the plaint, as amended, in which a specific plea was set up that the premises were required by the landlord for himself and, more specifically, for his sons. It was expressly averred that for the reason of an insufficiency of space, it was not possible for the landlord to expand the business. In support of this case, evidence was adduced of the two sons of the landlord Prabhakar (P.W.1). Prabhakar himself was employed in the Airforce as a Technician on a salary of Rs. 2000/- per month at that stage when the evidence was recorded. His second brother Prakash looked after the agricultural land of the family while the third brother Pravin was stated to be doing the business of the sale of bakery articles in the adjoining premises. He produced a licence under the Shops Act to demonstrate that such a business was, in fact, being carried on. Pravin (P.W.2) who was carrying on the business of a bakery shop in the adjoining premises also specifically stated that he intended to expand the business. A detailed line of cross-examination was carried out in the course of which it was sought to be highlighted that P.W.1 and P.W.2 had not produced the account books or documents relating to the sale of bakery articles. This, in fact, weighed with the first appellate Court. As a matter of law, in view of the settled principles laid down by the Supreme Court, it was not necessary for the landlord to produce material to demonstrate his financial capacity for the expansion of his business. To that principle of law laid down by the Supreme Court, it would now be necessary to turn.

8. In *G.C. Kapoor Vs. Nand Kumar Bhasin and Others*, , a Bench of two learned Judges of the Supreme Court held that the bona fide requirement of the landlord means that the requirement must be honest and not tainted with any oblique motive. The requirement should not be a mere desire or wish. On the other hand, though it is for the landlord to establish his bona fide requirement, there is no warrant for presuming that his need is not bona fide. In that case, the Supreme Court noted that the Courts below had with "mathematical precision" considered the financial capacity of the appellant-landlord and had come to the conclusion that the landlord did not possess the financial capacity. The Supreme Court held that these are irrelevant considerations as the question of having necessary funds to start the business is not at all necessary in view of the law laid down by the Court.

9. In the present case, as the matter stands, the Court has to have a broad view of social reality. The landlord's son Pravin in independently carrying on his small business relating to the sale of bakery articles. He stated in the course of his evidence that his daily income was Rs. 100/- to Rs. 125/-. In cross-examination, it was suggested to him that his income was not as much, but only Rs. 25/- to Rs. 30/-. The fact that books of account of the business were not produced was entirely an irrelevant consideration, for in view of the law laid down by the Supreme Court, it was not necessary for the landlord to establish that his son

had the financial capacity to expand the business. The first appellate Court proceeded on the basis that it was for the landlord to prove that the existing business of his son was prospering and, therefore, he required additional premises. Perhaps, it was on that foundation that the first appellate Court held that the failure to produce the account books would be a factor that would weigh against the landlord. This approach of the first appellate Court was completely misconceived. The evidence which was tendered and adduced by the landlord clearly shows that the requirement was not tainted with any oblique motive. The requirement was entirely genuine. The learned trial Judge on a correct appreciation of the evidence held that the requirement was genuine. Each of the grounds which has weighed with the first appellate Court is thus unsustainable in law and is alien to the requirement which the landlord must establish to be entitled to a decree u/s 13(1)(g) of the Act. The first appellate Court has wrongly accepted a submission which is now in the teeth of the law laid down by the Supreme Court.

10. Insofar as the question of comparative hardship is concerned, what weighed with the first appellate Court is that the original tenant had expired and had left behind his widow and children. D.W.1 Kusum Doshi stated that she was obtaining some income from the suit premises. Now, a perusal of the evidence of D.W.1 shows that even during the life time of the original tenant, a deed of partnership had been entered into by the original tenant. D.W.1 deposed that the shop was, in fact, in the possession of a third party. The account books of the shop were being kept by the third party and the whole business was being run by him. D.W.1 stated that her name was not entered in the deed of partnership after the death of her husband. She claimed that she was obtaining Rs. 2000/- to Rs. 2500/- from the shop every year. This was the deposition of D.W.1 in July 1987. The respondents have continued to be in occupation of the premises for 16 years thereafter and, in fact, for the last 23 years after the suit for eviction came to be instituted. In these circumstances, counsel for the petitioner asserts and not without a measure of justification, that the need of the landlord and his family cannot simply be ignored for all times to come. Counsel appearing on behalf of the respondents states that the son of the erstwhile tenant is now conducting an automobile shop in the premises. Having regard to the totality of the facts and circumstances, the view taken by the learned trial Judge on the question of comparative hardship is correct and commends itself for acceptance. The learned trial Judge noted that this was a case where the partnership entered into by the deceased defendant No. 1 had come to an end upon the death of the tenant. On the other hand, the landlord required the premises for the expansion of the business of his own son whose need was genuine. The fact of comparative hardship, therefore, weighed in favour of the landlord.

11. Thus considered, I am of view that the finding arrived at by the first appellate Court on the question of the bona fide need of the landlord is manifestly erroneous and needs to be interfered with.

12. Insofar as the question of sub-letting is concerned, I am inclined to accept the view which found favour with the first appellate Court. The rent note in the present case specifically provides in Clause (4) that it is open to the tenant to carry on the business either by himself or through any other person who could be allowed to conduct the business; and it will be open to the tenant to transfer the business together with goodwill and the leasehold interest. In view of the specific provisions contained in Clause (4) of the rent note, the ground of sub-letting was not established.

13. Before concluding, it will be necessary to record that Counsel appearing on behalf of the petitioner has also sought to challenge the validity of the finding of the Trial Court which had held against the landlord on the question of default in the payment of rent. The first appellate Court has specifically recorded in para 6 of its judgment that counsel for the plaintiff-landlord fairly conceded at the time of argument that he does not press the ground of default. In view of this statement in the judgment of the Appellate Court, Counsel for the petitioner has not been permitted to urge the ground of default since it was given up in the Court below.

14. In the circumstances, the petition is allowed. The impugned judgment and order dated 22.3.1990 passed by the 10th Addl. District Judge, Pune, is quashed and set aside and the suit for eviction filed by the petitioner, accordingly, stands decreed. The rule is made absolute accordingly. There shall be no order as to costs.

15. On the request of the learned counsel appearing on behalf of respondent No. 1, there shall be a stay of operation of this judgment for a period of eight weeks from today.