

(2009) 06 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 2436 of 1997

Shri Ramchandra Wagh

APPELLANT

Vs

Smt. Rajashree Bhoosereddy, The Additional Collector and
The Rent Controller

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

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

Citation : (2009) 6 MhLj 972

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : N.S. Khubalkar, for the Appellant; P.V. Vaidya, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—This petition by tenant is directed against orders passed by the Rent Controller and Additional Collector, holding that the landlady was entitled to issue quit notice to the applicant under Clause 13(3)(vi) of the C.P. & Berar Rent Control Order.

2. The facts, which are material for deciding this petition, are as under : Respondent Rajashree is owner of the premises comprising of a shop block situated at Sitabuldi, Nagpur, occupied by the petitioner on monthly rent of Rs. 60/. The respondent sought possession of the said block on the ground that one of her sons was in fourth year of LL.B. and wanted to start his office after completion of his studies. She had also sought possession on the ground that her daughter Sushma was doing Post Graduation at Medical College at Nagpur and intended to start her clinic in the shop block in the same building which had been vacated by another tenant. This application was filed on 7th July, 1987. During pendency of the application landlady's son, who was reading for LL.B. Degree, completed his studies and was selected in IAS and was posted as Additional District Magistrate at Agra. In the meantime her daughter Sushma also got married to a doctor at Hyderabad. Her another son passed Master of Dental

Surgery (MDS) examination. According to the landlady her son, soninlaw and daughter wanted to start a clinic and a nursing home at the building where the suit block was situated and therefore, wanted possession of the said block. It was stated that need of landlady's soninlaw and daughter was quite pressing and genuine.

3. This application before the Rent Controller was contested by the present petitioner who stated that the entire house in which the petitioner had his shop was vacant for the previous 23 years, having about four rooms each on the ground floor and the first floor. Two rooms on the second floor were also vacant. It was further stated that the landlady's family had a house on the same Mahatma Gandhi Road i.e. Main Road, Sitabuldi at Nagpur having wine shop on the ground floor, licence whereof was in the name of landlady's husband. It was also pointed out that the landlady's motherinlaw owned a house in New Colony, which was in business locality and business of lodging house was run therein. Therefore, he contested the claim that the landlady bonafide or reasonably require the premises for the needs pleaded by her.

4. In support of her claim the landlady examined her husband Ramesh Somrao Burureddy and the petitioner examined himself in support of his case. After considering the evidence tendered the Rent Controller held in favour of the landlady and granted permission under Clause 13(3)(vi) of the C.P. & Berar Letting of Houses and Rent Control Order to issue quit notice. The appeal by the petitioner before the Additional Collector was rejected and hence, the petitioner tenant is before this Court.

5. I have heard learned Counsel for the petitioner and learned Counsel for respondents No. 1.

6. The learned Counsel for the petitioner first submitted that the Rent Controller as well as Additional Collector should have held that there was, in fact no evidence given on behalf of the landlady to prove her bonafide need, since she had not entered the witness box. The learned Counsel for the petitioner relied on judgments of the Supreme Court in Vidhyadhar Vs. Manikrao and Another, and Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others, . He submitted that in view of the observations in these two judgments, if the plaintiff does not enter the witness box, presumption would arise that the case setup by him is not correct. A holder of Power of Attorney cannot depose in place of the plaintiff. Therefore, according to him, the evidence of landlady's husband, Ramesh, ought to have been rejected by the Rent Controller as well as the Additional Collector. He pointed out that in this case, even Power of Attorney had not been filed on record.

7. The learned Counsel for the respondent landlady submitted that it would not be proper to conclude that unless the landlady herself stepped into the witness box her need could not be proved. He submitted that the witness examined on behalf of the landlady was her own husband i.e. head of her family and

therefore, he too was personally in the know of the needs of the family. Therefore, his evidence was rightly relied on by the Rent Controller as well as the Additional Collector. The learned Counsel for the respondent submitted that a judgment has to be read in the context of facts in the said case. He pointed out that in *Vidhyadhar v. Manikrao* the suit was for redemption of mortgage by conditional sale or in the alternative for decree for specific performance. This suit was contested by defendant No. 1, who pleaded that the document in his favour was not mortgage by conditional sale but was out and out sale. Defendant No. 1 did not enter the witness box. In this context the Supreme Court observed that when a party to the suit does not appear in to the witness box to state his own case on oath and does not offer himself to be cross-examined, presumption would arise that the case set up by him is not correct.

8. In *Janki v. Indusind Bank* a suit had been filed for recovery of loan before the Debts Recovery Tribunal by the Bank. It was decreed and recovery certificate was also issued, pursuant whereeto, the property came to be attached. Wives of the borrowers filed a suit feigning ignorance of the fact that the proceedings had been filed by the Bank and the properties had been attached after recovery certificate. Before the Tribunal, in place of the wife, her husband appeared in the witness box as holder of Power of Attorney. Thus, the party who had knocked the doors of the Court abstained from stepping into the witness box. In the context of these facts it was obvious that it was for the wives to step into the witness box to prove the foundation of their suit. In this context, the Supreme Court observed in paragraph 13 that holder of Power of Attorney can act on behalf of the principal and perform certain acts but this would not include deposing in place of and instead of the principal.

9. Considering the peculiar facts of the above cases, on which the learned Counsel for the petitioner has placed reliance, it has to be held that the learned Counsel for the respondent is right in submitting that these judgments do not lay down any law of universal application that the facts of the case would have to be proved by the party itself stepping into the witness box.

10. The learned Counsel for the respondent landlady submitted that this question had come up before a Division Bench of this Court in *Nathulal Gangabaks Khandelwal v. Nandubai Bansidhak Khandelwal*, in Special Civil Application No. 1669 of 1975, decided on 16.11.1983. In that case, in place of landlady her son had stepped into the witness box to prove that she wanted possession of the tenements for personal occupation. Judgment of the learned single Judge of this Court in *Nanlal v. Samratbai*, holding in the context of Section 13(1)(g) of the Bombay Rent Act that if the landlord did not step into the witness box, then it could not be said that she reasonably and bonafide requires the premises was cited before the Division Bench. Section 13(1)(g) of the Bombay Rent Act corresponds to Clause 13(3) (vi) of the C.P. & Berar Rent Control Order. The Division Bench observed that it did not agree with the proposition which had been adumbrated by the learned single Judge in *Nanlal v. Samratbai*. The Bench

observed that it may be that certain facts which are needed to establish bonafide requirement are in personal knowledge of the landlord alone. But if these factors can be established by evidence other than that of landlord, which would sufficiently indicate that the landlady requires the premises bonafide, it was not clear as to why it would be necessary, as a matter of law, that the landlord must examine himself, with fatal consequence if he omitted to do so. The question, in view of the Division Bench, was whether the evidence with regard to the bonafide requirement should or should not be accepted in a given case in the absence of evidence of the landlord himself. I am in respectful agreement with the observations that it cannot be laid down as a proposition of law that bonafide need cannot be proved without examining the landlord himself. In this case, the evidence of landlady's husband about the need for her children was as good as evidence which the landlady could herself have given and therefore, her non-examination could not have been fatal to the case.

11. The learned Counsel for the petitioner-tenant next submitted that there was in fact no need for the landlord to secure possession of the premises occupied by the petitioner. He pointed out that the landlady's husband had accepted that the son, for whose needs possession of the premises was sought, had joined Indian Administrative Services (IAS) and was away from Nagpur. His another son Ajay had completed BDS in 1989 and wanted to practice by opening a Dental Clinic with modern equipments. The learned Counsel pointed out that the landlady's husband admitted that he himself was a Dentist and having a clinic in his own house at Sitabuldi Main Road. Therefore, according to the learned Counsel for the petitioner, landlady's son Ajay could even set up his practice in his father's clinic. The learned Counsel for the respondent countered by pointing out that the landlady's husband had stated that his son did not want to start practice with him as his instruments were old. It would not be appropriate to force a father and son to share a small dental clinic merely in order to ensure the convenience of a tenant. It is common knowledge that generational gap would make it impossible for a modern dentist to practice with antiquated equipments just as it would be impossible for a dentist of the old school to adapt himself to modern gadgetry. Therefore, it cannot be said that the need of the premises for setting up another son Ajay in dental practice is fanciful.

12. The learned Counsel for the petitioner submitted that landlady's husband had admitted that there are ample premises available in the house of landlady's mother-in-law. However, there is no reason to disbelieve the word of landlady's husband Ramesh that their terms with his mother are not good. As for the other rooms available in the same building where the petitioner's shop is situated, even the petitioner has admitted in his cross-examination that the rear portion of the house is in dilapidated condition and that there is no room in the house in which clinic can be started without making repairs. Thus, the learned Counsel for the respondent rightly submitted that the premises in possession of the petitioner was the only ones which were readily available to set up landlady's son in dental practice.

13. The learned Counsel for the petitioner submitted that claim by the landlady that she wanted the premises for setting up her son in dental practice was, in fact not pleaded. He pointed out that in paragraph 2A of the application, which was added by amendment, the need pleaded was in the following words:

...The applicant shall make the necessary additions and alterations to the suit house to suit the need of the applicant's son-in-law and daughter which is quite pressing and genuine. The applicant is in urgent need of the premises and the said need is genuine and bonafide....

Therefore, according to him, need of son has to be totally excluded. This is improper way of reading the pleadings. It may be seen that in the same paragraph the landlady has specifically set up the need of the premises for starting dental clinic of her son. Even the sentence which precedes the one quoted distinctly mentions the Clinic, Nursing Home and Maternity Home. Nursing Home and Maternity Home were to be started by the landlady's daughter and son-in-law and clinic was to be started by her son. The sentence which the learned Counsel for the petitioner pinpoints, refers to making additions and alterations to suit the needs of applicant's son-in-law and daughter. This obviously refers to the remaining part of the building which is dilapidated, even according to the petitioner.

14. The learned Counsel for the petitioner submitted that need must be actual and pressing need and not mere whim or fanciful desire. For this purpose, he relied on the judgment of the Supreme Court in Deena Nath Vs. Pooran Lal, . The learned Counsel for the petitioner submitted that landlady's daughter and son-in-law are at Hyderabad and in normal circumstances the daughter would live at the house of her husband and would practice there. Therefore, according to him, need pleaded is fanciful. The learned Counsel for the respondent countered by submitting that it would not be appropriate to stick to a stereotype in the present days, when whole population is migrating and changing the family culture. According to him, if landlady's daughter and son-in-law find practice at Nagpur more lucrative than at Hyderabad, there is no reason why they should not have a desire to set themselves up in practice at Nagpur. He relied on a judgment of the Division Bench of Nagpur High Court in Balbhadra v. Premchand reported at 1953 N.L.J. 233, where even daughter's need had been taken into consideration. In Kanhaiyalal Babulal Srivastava v. Bapurao Ganpatrao Nandanwar reported at 1988(3) Bom. C.R. 89 the Division Bench of this Court had considered the need set up by the landlord for his married daughters because the daughters wanted to reside with the parents. There cannot be any stereotype in the matter of ascertaining family needs and in changing time it would not be improper to a Hindu father or mother to accommodate a daughter and son-in-law just as he would accommodate a son and daughter in law.

15. The learned Counsel for the respondent submitted that in such matters a pragmatic approach is necessary and for this purpose relied on a judgment of the Supreme Court in Maganlal Godha Vs. Nanasaheb Gadewar, . In that case, the

Court had noted that landlord tenant litigation prolongs for a long time and it would not be possible to imagine that a person for whose need possession was sought would sit idle throughout the period of litigation. Considering this it cannot be said that the Rent Controller or the Additional Collector in appeal erred in holding that the landlady was entitled to issue a notice to quit under Clause 13(3)(vi) of the C.P. & Berar Rent Control Order in the proceedings which were started twenty-two years ago.

16. The petition is, therefore, dismissed.

17. In the circumstances, there shall be no order as to costs.