

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3201 OF 1992

1. Narayandas Ramkisan Malani (Deceased)
2. Harikisan Narayandas Malani
Since deceased, by his L.Rs.
Smt. Kamal Harikisan Malani and Ors.
Sangli, District: Sangli.
3. Nandkishore Narayandas Malani,
Sangli. ..Petitioners

Vs.

1. Mahadeoprasad Umayashankar Pandya
(Since Deceased) Through L.Rs.
Smt. Kamalaben Mahadeoprasad Pandya
& Ors., Bombay.
2. Kumari Sudha M. Pandya,
Sangli. ..Respondents

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Mr. S.R. Page, Advocate for Petitioners.

Mr. Umesh Mankapure, Advocate for Respondent Nos. 1-B to 1-D
and 2.

....

CORAM : N.M. JAMDAR, J.

DATED : 16 APRIL 2015

ORAL JUDGMENT:

By this petition, the petitioners challenge the judgment and decree dated 17 January 1985 passed by the learned Civil Judge Junior Division, Sangli and the judgment and order dated 2

November 1991 passed by the learned District Judge, Sangli. During the pendency of the petition, certain findings were called for, in view of the subsequent events and those findings have been placed on record.

2. The premises let out to the respondents is a shop admeasuring 20 x 35 sq.ft on the ground floor of a building situated at CTS No. 790, Ganapati Peth, Sangli . The petitioners are the landlords of the entire ground floor and the two upper floors of the suit building. The respondents are the monthly tenants on the rent of Rs.100/-. The petitioners issued a notice on 30 April 1975 terminating the tenancy of the respondents. Thereafter again another notice is sent on 19 August 1976 claiming arrears of rent.

3. A Regular Civil Suit No. 599/1976 was filed by the petitioner in the Court of Civil Judge Junior Division, Sangli for possession of the suit premises on the ground of arrears of rent and reasonable and bonafide need of the petitioner. The learned Civil held that the respondents were not willful defaulters but the petitioners required this premises for their bonafide and reasonable use and occupation. The learned Civil Judge by the judgment and decree dated 17 January 1985 partly decreed the suit and directed the petitioners, at their own cost, to divide the suit property into three equal parts and the middle portion was to be given to the respondents. Thereafter the respondents filed Regular Civil Appeal No. 84/1985 in the District Court, Sangli. The learned District Judge, Sangli confirmed the findings that the respondents were not

defaulters, however set aside the finding that the petitioners required the suit premises for their bonafide and reasonable use. Accordingly, by judgment and order dated 2 November 1991, the learned District Judge allowed the appeal. The cross objections filed by the petitioners were dismissed.

4. Thereafter, the petition was filed by the petitioner ,which was admitted. The petition came up for hearing on 26 February 2010 and it was argued. The learned Single Judge came to the conclusion that the findings recorded by the District Judge was not supported by reasons and when there was a finding of the trial court in favour of the petitioner as regards bonafide requirement and it was being reversed, the District Judge ought to have given reasons. It was however contended by the learned Counsel for parties that the suit was filed in the year 1976 and by passage of time, various subsequent events were taken place. The learned Single Judge therefore directed the parties to appear before the learned Civil Judge. The petitioners and the respondents were given liberty to amend their pleadings as regard subsequent events and the parties were given liberty to let further evidence. The learned Civil Judge was directed to consider the submission and record a finding, which was to be forwarded to the District Court, and the District Court was directed to certify the finding, after hearing the parties. Thereupon, the parties amended their respective pleadings and led evidence. The learned Civil Judge recorded the finding as regard the case of the petitioner regarding bonafide requirement and occupation. By order dated 21 December

2010, the learned Civil Judge held that the petitioners have acquired various suitable accommodations and their need no longer survives. This finding was transmitted to the District Court. The learned District Judge gave opportunity to both the sides and certified the findings by order dated 19 January 2011 and the same has been forwarded the same to this Court.

5. I have heard the learned Counsel for the parties and I have also perused the findings recorded by the learned Civil Judge and the learned District Judge rendered pursuant to the order dated 26 February 2010.

6. The suit was instituted on the ground of bonafide requirement and default in arrears of rent. The learned Counsel for the petitioners has pressed in service the ground as regard the bonafide requirement of the petitioner. According to the learned Counsel, the finding recorded by the learned Civil Judge and the learned District Judge ,which has been remitted to this Court, is erroneous and the premises in possession of the brother for whom the premises were not sought for have taken been into consideration. The learned Counsel for the respondents has supported the findings rendered by the Courts below.

7. It is brought on record that from 1976, when the suit was instituted, various developments have taken place. The suit was filed by the petitioner pleading the bonafide and reasonable requirement for the purpose of business and residence of the

original plaintiff . It is pleaded in the plaint that the original plaintiff no.1 suffered loss in business. The original plaintiff nos.2 and 3 are the sons of the original plaintiff no.1, who have become major, they do not have any place for business and also do not have adequate place for residence. When the issue was remitted to the learned Civil Judge, the learned Civil Judge recorded that two residential plots admeasuring 3,000 and 1,000 sq. fts. for the accommodation of Nandkishore and the family members of Harkishan were now available. Nandkishore admitted that they had purchased a godown and also of purchase of a constructed property admeasuring 195 sq.mtrs. which was at the distance of 20 ft. from the suit premises. It was admitted that this property being used for commercial purposes. Nandkishore also admitted that he has purchased 700 sq.fts. on the first floor and second floor in CTS 684. It was stated by the Nandkishore that he himself does not need the suit property, but it was needed for the sons of Harkishan who has expired. The sons of Harkishan have not entered into witness box to depose their need. The learned Civil Judge therefore in absence of any evidence from them did not accept their need as they had not offered themselves to cross examination.

8. The learned Civil Judge after assessing the evidence on observed as under:

“(12) I have gone through the oral and documentary evidence to find out the properties in possession of the plaintiffs.

- 1) *The suit property is admeasuring 35 feet x 20 feet and the two floors above the same and of the same area is in the possession of the plaintiffs which has been clearly admitted by the plaintiff- Nandkishore.*
- 2) *Next property is CTS No. 794 which is situated on the main road in Ganapati Peth. It's city survey extract is at Exh. 229 and assessment extract is at Exh.208. These documents go to show that entire property is of 2000 sq.feet area acquired by the plaintiffs is in use for commercial purpose and out of the same 500 sq.feet is used for shop and remaining 1500 sq.feet is used as godown.*
- 3) *Thereafter, the defendants have produced on record city survey extract of CTS No. 684 and assessment extract of Corporation at Exh. 209 and 210. Wherein seems that 700 sq.feet area is on the first floor of the same building and other 700 sq.feet area is on the second floor of the same building is acquired by the plaintiffs. This property is also situated in Ganapati Peth.*
- 4) *It is also to be noted here that the plaintiff-Nandkishore has admitted in his evidence at Exh.45 that their plot no. 68 situated in Market Yard area is in possession of the tenant and since lifetime of Narayandas they were dealing in the business of gaggary, groundnut, chilly etc. The plaintiff- Nandkishore stated in his cross examination that three years before the date of recording his evidence it was let out. His evidence is recorded in the year 1984, it means the said plot was let out in the year 1978-1980 i.e. after*

the filing of present suit. It has also come in his evidence that it is still in possession of the tenant.”

In view of this acquisition of the properties, the learned Civil Judge also considered the issue of comparative hardship and held that hardship will be caused to the respondent if the decree is passed. The learned District Judge has certified these findings.

9. The acquisition of properties which has been listed above has been established on record. These properties have been acquired during the pendency of the proceedings. The premises are acquired in the very same locality. These premises are commercial premises. The suit premises of which possession is sought which admeasures 35 x 20 ft. is also a commercial premises. If the details of the newly acquired premises are seen, it clearly shows that the acquisition of an area of 35 x 20 ft. is no longer necessary for the petitioners. Having called for this issue regarding the need of the petitioners-landlord, the acquisition of all these properties as on today cannot be ignored. Even though the need is pressed on behalf of the sons of Harkishan, they have not bothered to enter into the witness box and offer themselves for cross examination. The learned Judge was therefore right in not accepting their need. As far as the other petitioners are concerned, as stated above, all have adequate premises in their possession.

10. As far as comparative hardship is concerned, firstly the petitioners-landlord has not proved the case of bonafide

requirement, the issue therefore does not arise. Secondly, even assuming it arises, the respondents have led oral evidence, from which nothing has been dislodged to show that the respondents have any alternate accommodation to run their business. Considering the number of premises available to the petitioners, it is clear that greater hardship will be caused to the respondents if the respondents are vacated from the suit premises.

11. The judgment and order passed by the District Court declining the relief in favour of the petitioner has to be upheld. In view of this position, no interference is called for with the impugned order in writ jurisdiction. The Writ Petition is accordingly dismissed. Rule discharged. No costs.

12. The learned Counsel for the parties had sought time to explore possibility of settlement but nothing fruitful has resulted. It is always open to the parties to enter into a settlement if they so desire.

(N.M. JAMDAR, J.)