

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

CIVIL REVN. APPLICATION NO. 122 OF 2006

1. Shri Hanuman Mishrimal Oswal
Residing at 154, Manisha Co-op. Hsg. Society,
Rasta Peth, Pune – 411 011.
2. Smt.Kumudini Popal Oswal,
Residing at 154, Manisha Co-op. Hsg. Society,
Rasta Peth, Pune – 411 011.
(Deleted and transposed at Resp.No.10) ... Applicants

v/s

1. Shri Chandrakant Bhagwantrao Chavan
Residing at Shivajinagar, Pune.
2. Shri Vasant Bhagwantrao Chavan
Residing at Shivajinagar, Pune.
3. Shri Mukundrao Bhagwantrao Chavan
R/o 501, Shivaji Nagar, Pune.
4. Sou. Kanta Dattatraya Jaigude,
R/at 136, Warje Malwadi, Pune.
5. Smt.Paribai Mishrimal Oswal
(deleted since deceased)
legal heirs already on record.
6. Kumar Deepak alias Dumpu P. Oswal,
through his natural guardian Mother
Smt. Kumudin Popat Oswal,
154, Manisha Co-op. Hsg. Society,
Rasta Peth, Pune – 411 011.

7. Shri Jawahar Mishrimal Oswal,
1383, Shivajinagar, Near Chavan Mill,
Joshi Ali, Pune.
8. Sou. Kamalabai Chhaganlal Shrimal,
R/at New Cloth Market, Ballard.
9. Smt. Leelabai Sukundraja G.
R/at 1575, Tipunagar,
Tal. Harihar, Dist. Chtradurg,
(State of Karnataka).
- 10 Smt.Kumudini Popat Oswal,
A/at 154, Manisha Co-op. Hsg.Society,
Rasta Peth, Pune – 411 011. ... Respondents

Mr.Shriram S. Kulkarni for the Applicants.

Mr.Girish Paryani for the Respondent Nos.1 to 3.

CORAM: N. M. JAMDAR, J.

DATED : 24TH APRIL, 2015

ORAL JUDGMENT:

By this civil revision application, the Applicants challenge the judgment and decree passed by the learned District Judge, Pune, dated 21 June 2006, allowing the Civil Appeal No.83 of 1999 filed by the Respondents and directing the Applicants to hand over possession of the suit premises.

2 The premises in question is a shop on the ground floor of

C.T.S. No.1383 situated within the limit of Pune Municipal Corporation. The premises were let out to the father of the Applicants and after his demise the Applicants continued as tenants, running the business from the shop premises. The Respondents filed Regular Civil Suit No.1646 of 1988 in the Small Causes Court, Pune for eviction of the Applicants. The Respondents contended that there were 10 members in the family of the Respondents, they have only five rooms in their possession which were not adequate. The Respondent/Plaintiff No.2 who is an advocate, did not have any office premises. Plaintiff No.3 did not have commercial premises to start his business. Plaintiff No.2 had two sons and they also did not have premises to start their business. The daughters of plaintiff No.4 do not have any place for their school study. Accordingly, the suit was filed on the ground of bonafide requirement. It was contended that since the Applicants have alternate premises, no hardship will be caused to them. Thereafter the suit was amended on 2 July 2004 and additional averments were incorporated stating that sons of plaintiff No.3 have completed education and, therefore, they need premises for business. A written statement was filed by the Applicants wherein the Applicants contended that the Respondents have various alternate properties which have not been disclosed by the Respondents and it was denied that no hardship will be caused to the Applicants if decree is passed.

3 Both the parties led oral as well as documentary evidence.

The suit was tried by the Small Causes Court, Pune. The Trial Court framed issues as to whether Respondents are entitled to recover possession on the ground of bonafide requirement. The Trial Court took into consideration the properties which were in possession of the Respondents. It came to the conclusion that the Respondents had suppressed the facts about rooms in their possession at Warje. It was noted that construction was going on in the property at Warje by name Parvati Sankul. The Trial Court also considered the oral evidence of the respondents and observed that, they were suppressing the fact about the property at Warje and the construction by name Parvati Sankul at Kondhwa. The Trial Court after considering the pleadings and the oral evidence, came to the conclusion that the need of the Respondents was not bonafide as they have suppressed material facts about the properties owned by them and accordingly, by the judgment and order dated 5 December 1988 dismissed the suit.

4 Respondents thereafter filed a Civil Appeal No.83 of 1999 in the District Court, Pune. The Appellate Court considered the issue of bonafide requirement. After considering the evidence produced on record, the Appellate Court came to the conclusion that the properties which were not disclosed either were not suitable for the need of the Respondents. The Appellate Court thereafter proceeded to hold that it will be landlord's choice to decide which property is suitable and, therefore, the choice of the landlord cannot be interfered with. The Appellate Court opined that there is

no suppression as the properties which were brought on record by the admissions of the Respondents were not suitable. The Appellate Court accordingly, vide judgment and decree dated 21 June 2006 allowed the appeal and directed the Applicants to hand over possession. Thereafter the present civil revision application is filed.

5 I have heard Mr.Shriram S. Kulkarni for the Applicants and Mr.Girish Paryani for Respondent Nos.1 to 3.

6 Mr.Kulkarni primarily contended that no decree should have been passed in view of gross suppression by the Respondents. He submitted that the alleged need does not exist and there is utter lack of bonafides. He relied upon the decisions of this Court in the case of *Narendra Gulabrao Zade v/s Shiocharan Ghashiram Gupta*¹; *Sitaram Narayan Shinde & ors. v/s Ibrahim Ismail Rais & ors.*²; *Tarachand Hassaram Shamdasani v/s Durgashankar G. Shroff & ors.*³; and *S.P. Chengalvaraya Naidu v/s Jagannath & ors.*⁴. Mr.Paryani supported the impugned judgment and decree and contended that there is no suppression and the properties were not available when the suit was filed.

7 In the above decisions, a legal position has been laid down which need to be kept in mind before proceeding further with the

1 2011(1) Mh.L.J. 839

2 2005(1) ALL MR 74

3 2004(Supp.) Bom.C.R. 333

4 (1994) 1 SCC 1

discussion on facts of this case. In the case of **Naidu**⁴, the Apex Court observed that where party in a suit does not disclose a vital document, such conduct would amount to fraud on the Court. The Trial Court therein had dismissed the proceedings on the ground of fraud. The High Court set aside the case of the Trial Court holding that there was no legal duty cast upon the plaintiff to come to the Court with full disclosure. Reversing the decision of the High Court, the Apex Court observed as under :

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

4 (1994) 1 SCC 1

The decision in the case of **Naidu** was followed by the learned Single Judge of this Court (A.M.Khanwilkar, J. as he then was) in **Tarachand**³. This case arose from the claim of the landlord on the ground of bonafide requirement. The charge against the landlord was that, he had failed to disclose the necessary particulars which were relevant and crucial for deciding the need of the landlord. Khanwilkar, J. observed as under :

6.What is relevant to note is that the plaintiff swiftly changed his stand regarding the nature of his requirement; and, moreover, in spite of serious objection taken by the petitioner regarding non-disclosure of relevant materials which were necessary to decide the issue of bona fide and reasonable requirement, however, even during the examination-in-chief the plaintiff, who had stepped into the witness box as P.W. 1, did not think it necessary to make disclosure of all the relevant material facts relevant and crucial for deciding the issue of bona fide and reasonable requirement. It is however, only during the cross examination that the plaintiff was confronted with those material facts when he had to admit that he also owned various other premises.....
..... These facts were indeed relevant for deciding the issue of bona fide and reasonableness of the requirement of the plaintiff, but were not disclosed either in the pleadings or at least in the examination-in-chief when the plaintiff entered the witness box. However, were elicited only during the cross-examination conducted by the defendant-tenant. This was possible only because all these details were within the knowledge of the defendant-tenant. In spite of such overwhelming evidence on record, the Courts below have proceeded to answer the issue of bona fide and reasonable requirement in favour of the Respondent landlord. That cannot be countenanced, to say the least.

3 2004(Supp.) Bom.C.R. 333

7.

8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that in spite of those acquisition and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be bona fide and reasonable.

9. I have no hesitation in taking the view that in the fact situation of the present case the plaintiff has failed to plead and also depose in his evidence (examination-in-chief) about the ownership of other premises capable of being used for the requirement pressed into service in the subject suit. Besides, he has failed to disclose and explain that even the other premises were not sufficient to satisfy the requirement/pressed into service in the suit against the tenant. Only when the landlord pleads and proves all these material facts that the Court would be able to adjudicate fully, completely and effectually as to whether the requirement pressed into service by the landlord in the suit so filed is bonafide and reasonable. As mentioned earlier, it is well settled that the landlord is not only required to establish his need to be bona fide but also to be reasonable. If the landlord fails to plead or establish either of this ingredient then the ground under section 13(1)(g) of the Act for eviction is unavailable to the landlord. Inherent in this test is that, if the landlord has failed to disclose relevant materials in the pleading and in his evidence (examination-in-chief), de jure, the landlord has not approached the Court with clean hands. In such a case, it will be the duty of the Court to non-suit the landlord with regard to this ground. It will be useful to place reliance on the enunciation of the Apex Court in the case of S.P. Chengalvaraya Naidu's case

(supra). The Apex Court has observed that duty is cast upon the plaintiff to disclose all the facts, it is the duty of the plaintiff to come to Court with true case and prove it by true evidence. The Apex Court has further observed that deliberate deception with the desire of securing something by taking unfair advantage of another, it is a deception in order to gain by another's loss, it is a cheating intended to get an advantage. Further, in paragraph 6 it has observed that, non-disclosure of all the material and relevant facts at the trial tantamount to playing fraud on the Court. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. Withholding of any vital document in this case information, in order to gain advantage on the other side then he would be guilty of fraud on the Court as well as on the opposite party. Such a person can be summarily thrown out at any stage of the litigation. If this principle is to be applied to the facts of the present case, I have no manner of doubt that the respondent-landlord will have to be non-suited on this ground. Because, it is a case of non-disclosure of material facts and information, therefore, one of approaching the Court with unclean hands. And as observed by the Apex Court tantamount to playing fraud on the Court as well as the opposite side. In this case sheerly because the petitioner tenant was vigilant enough, could muster the necessary information to confront the Respondent landlord regarding his need being not bona fide and reasonable....”

Thus, only when the landlord pleads and proves of the material facts that the Court would be able to adjudicate fully and completely as to whether the requirement pressed into service by the landlord in the suit so filed is bonafide and reasonable. If the landlord has not approached the Court with clean hands, it will be the duty of the Court to non-suit the landlord on this ground.

Khanwilkar, J. thereafter dealt with the argument of the landlord therein that the case of fraud was neither pleaded or argued before the Court below. Khanwilkar, J. held that, assuming the case of fraud is not pleaded but a specific claim is made by the landlord that the requirement is bonafide, then, if it is found that the conduct is of such a nature to gain unfair advantage, then it would be the duty of the Court to non-suit such litigant.

8 In the case of *Narendra Zade*¹, similar factual position arose. The landlord had sought possession of the premises on the ground of bonafide requirement. The Court held as under :

“10. The reliance upon the judgment delivered by me and reported in the case of Murlimanohar v/s Prabha Bhattacharya (supra) in this situation is misconceived. There, the landlady and her sisters qualified gynecologists were seeking eviction of tenant to start maternity home and hospital. The tenant was urging that they can have their complex and in that complex the tenant also can be accommodated. The evidence which has come on record there has been appreciated and such insistence on the part of the tenant was found to be unjustified. This Court has found that, in such situation, the landlord is the best judge of his need. The judgment, therefore, has no application in present facts. The landlord can claim to be a best judge of his need after he fairly discloses all option available to him and shows some reason for choosing particular option i.e. premises. It is this election, effected by him after full knowledge and appreciation, which cannot be interfered with judicially. Here, the premises at Rajapeth were

1 2011(1) Mh.L.J. 839

suppressed and hence it cannot be said that the landlord has judged his need bonafide in accordance with law. In this situation, I find that the petitioner-landlord can initiate fresh proceedings in accordance with law.”

Thus, the landlord can claim to be best judge of his need after he fairly discloses all options available to him and shows some reason for choosing a particular option. If the availability of premises is suppressed, it cannot be said that the landlord's need is bonafide and in accordance with law.

9 The present suit was filed by the Respondents claiming possession of the premises on the ground of bonafide requirement. The suit premises is a shop from which the Applicants are carrying on their business activities. The suit was filed by four plaintiffs, plaintiff Nos.1, 2 and 3 being brothers. The need pleaded in the plaint was on behalf of all the three brothers. As regard plaintiff No.1 it was for the office, as regard plaintiff No.2 it was for his business purpose and as regard plaintiff No.3 it was for starting business of his two sons. It was stated that there were five rooms in their possession and therefore they needed the suit premises. The premises were also sought for requirement of studies of three daughters. The main ground on which the Trial Court held against the Respondent was that the Respondents suppressed availability of the suitable premises. The Appellate Court has reversed the findings by considering that the premises which were not physical were not suitable. The question is whether such approach is

permissible in law.

10 On behalf of the Respondents/plaintiffs, the Respondent No.1 who is an advocate, examined himself. In the examination-in-chief he denied that there were property at Warje. He also denied that they have any property at Kondhwa. Thereafter, in the cross-examination the Respondent No.1 admitted having properties at Kondhwa and Warje. He gave an explanation that his properties were not disclosed in the plaint as it was not found necessary. The Respondent No.3 Mukund also examined himself. In his cross-examination, he firstly stated that the property is at Kondhwa and Warje are shown in the plaint, however, it was subsequently stated that it was not so shown. He further stated that the Respondent No.1 i.e. Chandrakant had no knowledge about the said properties. On behalf of the Applicants, the original defendant No.3 examined himself, was also cross-examined.

11 In the plaint, need is pleaded on behalf of all the brothers. Various diverse needs have been pleaded. There is absolutely no reference to the other properties. In the written statement, stand was taken by the Applicants that various properties have not been disclosed. The written statement was filed in the year 1989. The plaint was thereafter amended by the Respondents in the year 2004 stating that sons of plaintiff No.3 have grown up and they need the premises. At the time of amendment in 2004, admittedly, property at Kondhwa was developed and construction was also carried out

thereon.

12 Respondent No.1 was examined in 1998. In the examination-in-chief, he denied that the Respondents have property at Warje and at Kondhwa. It was a specific denial. In the cross-examination when questions were put to the Respondent No.1 and property extracts were shown, he had to admit that there were properties at Warje and Kondhwa. He had to admit that the property at Warje was purchased about in the year 1970 and there is a construction of about 1000 sq. ft. in the property. Firstly, he denied that there are four rooms. Subsequently admitted that the property shown in Exh.125 there were four rooms. As regard the property at Kondhwa, he admitted that the construction was going on in the property by name Parvati Sankul and that it has three floors which are residential with 7 flats and the building was constructed about three years before. He deposed in the cross-examination that the properties at Warje and Kondhwa were not disclosed in the plaint as he did not feel it necessary. Thereafter he stated that these properties are not convenient.

13 When the brother of the Respondent No.1 i.e. Mukund – Respondent No.3 was examined, he firstly took a stand that the construction at Kondhwa was a joint family property but later on stated that it was a partnership firm and there has been partition in the property. He firstly asserted that the properties at Kondhwa and Warje are shown in the plaint but being shown the plaint he

had to admit that it was not mentioned. He also stated that Respondent No.1 Chandrakant did not know about the properties.

14 The evidence of both these witnesses is full of contradictions and evasive statements. From denying the very existence of properties on oath, the Respondent No.1 changed his stand to the properties being not convenient. Respondent No.3 has gone to the extent of stating that Respondent No.1 does not know of the properties. It is impossible to believe that, when these Respondents, brothers, filed the suit together they would not know these properties. To put it most mildly, the Respondents have not been truthful to the Court. Respondent No.1 is an advocate must know the fundamental principle of being truthful on oath. The Respondents have changed their version in the oral evidence at will.

15 Mr.Paryani submitted that though it is correct that the properties are not mentioned in the plaint, but it was because these properties were only plots when the suit was filed. Mr.Paryani submitted that the main requirement of Respondent No.1 was for an office and therefore there was no question of disclosing the availability of plots when the plaint was filed. Had this been the stand alone circumstance, there may have been substance in the submission of Mr.Paryani. However, this is not the position. The need is pleaded on behalf of all the brothers with every possible requirement. The need was not pleaded only for the

Respondent No.1 to start his office. Further, clear statements on oath were made that the Respondents have no other property. Assuming that the properties were open plots at the time when the suit was filed, when the amendment was carried out to the plaint and further requirement was pleaded in the year 2004, the property at Kondhwa was fully developed and building with flats was available. Even at that time, there was no mention of the new building. Thereafter when the Respondents deposed in the Court, the Respondent No.1 not only did not mention about the presence of the properties at Kondhwa and Warje but went to the extent of denying that they don't have any properties at Kondhwa and Warje. This is a clearly false statement on oath by the Respondent No.1. In the cross-examination the Respondent No.1 thereafter had to admit the presence of the properties and the construction thereon. Thus, when the suit came for trial and the evidence was led, the availability and suppression of these properties became clear.

16 The Trial Court considered the conduct of the Respondents in detail. He analyzed the contradictions and the variance of the stand between the Respondents and rightly refused to grant a decree on the ground of bonafide requirement considering the conduct of the Respondents. When the appeal was heard by the Appellate Court, the Appellate Court firstly analyzed the suitability of the disclosed properties and held that they were not suitable for the Respondents. The Appellate Court completely side stepped the conduct of the Respondents of suppressing the properties and the

implications of the suppression on their bonafides. If the Respondents had indulged in suppressing the vital information regarding availability of premises, then it reflected on the bonafides of their need. The Appellate Court adopted a reverse approach. It first examined the merits of the claim of the Respondents and then stated that there was no suppression. Assuming this approach is permissible, the Appellate Court was not right in holding that the properties were not suitable. The properties at Kondhwa were residential flats and also commercial premises. The entire family could be accommodated there.

17 Even assuming the position of law is in favour of the Respondents, the affidavit placed on record dated 9 February 2015 wherein certain subsequent events have been pleaded need to be noticed. It is averred by the Applicants that rooms in the suit premises have fallen vacant and are rented out on cot basis. It is also stated that the properties at Kondhwa is a residential and commercial complex and all the three brothers are occupying each of the residential floor at Kondhwa. The Respondents have not controverted the assertions.

18 Therefore, the position that emerges is that, even though the suit properties at Kondhwa and Warje at the time when the suit was filed, were open plots, the time the amendment to the plaint was carried out and the parties examined themselves on oath, the property at Kondhwa was developed and commercial and residential premises were available. Even in the evidence, the

Respondents have tried to deny the existence of these properties. It is upon the cross-examination, by confronting with property extracts that the Respondents admitted the existence of the commercial structure. The excuses tried to be given that Respondent No.1 does not know the existence of their property are absurd, considering the fact that all the Respondents, brothers, had jointly filed the suit. Even though the suit is filed for the need of entire family, one brother has stated that partition has taken place in the family. The entire conduct of the Respondents during the trial had to be taken into consideration and was rightly taken into consideration by the Trial Court. The Appellate Court allowed the appeal without considering the duty of the Court to non-suit such litigant as laid down in the decision in the case of *Tarachand* following the decision of the Apex Court in the case of *Naidu*. The Appellate Court failed to exercise the duty cast upon the Court. The conduct of the Respondents through out the litigation, is of wrongful denial, making incorrect and misleading statements. Even otherwise as on date, the construction at Kondhwa is complete and the Respondents are residing there. The rooms in the suit premises after falling vacant have been let out again.

19 The judgment and decree passed by the District Court directing eviction of the premises therefore cannot be sustained. In the circumstances, the civil revision application deserves to be allowed as there is clear jurisdictional error on the part of the

Appellate Court.

20 The civil revision application is accordingly allowed in terms of prayer clause (b). The judgment and decree passed by the District Court, Pune, in Civil Appeal No.83 of 1999 dated 21 June 2006, is quashed and set aside.

21 The Respondents shall pay costs of Rs.25,000/- to the Applicants in view of the observations made in this judgment.

(N. M. JAMDAR, J.)