

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6290 OF 2014

Prabhakar V. Karmarkar

.. Petitioner

vs.

Madan M. Karnawat

.. Respondent

Mr. G.S. Godbole i/b Mr. Jaydeep Deo for the Petitioner.
Ms Gauri Godse for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 28 JULY 2015.

P.C. :-

1] This petition challenges the orders dated 20 September 2013 and 2 April 2014 made by the Trial Court and the Appeal Court directing the eviction of the petitioner from the suit premises on the ground that the same are required reasonably and *bona fide* by the respondent-landlord.

2] Mr. Godbole, learned counsel for the petitioner, submitted that the landlord in his evidence has stated that he resides in Flat No.3 at Apte Colony, which is in the name of his wife and same comprises of three rooms. However, before the Appeal Court, the learned counsel for the landlord conceded that the landlord is in possession of five rooms. On this basis, Mr. Godbole submitted that there was suppression of vital fact by the landlord. Relying upon the decision

of this Court in case of ***Tarachand Hassaram Shamdasani vs. Durgashankar G. Shroff & ors.***¹, Mr. Godbole submitted that where the landlord does not comply with the obligation of making full and complete disclosure, the requirement of such landlord can never be regarded as either reasonable or *bona fide*.

3] Having heard the learned counsel for the parties and perused the record, I do not find that this is a case which warrants any interference. The two Courts have recorded concurrent findings of fact and no perversity has been demonstrated in the record of such findings of fact. This Court, in exercise of its jurisdiction under Article 227 of the Constitution of India does not exercise any appellate powers. Therefore, unless it is demonstrated the findings of fact is perverse or contrary to the weight of evidence on record, there is no question of any interference.

4] On the aspect of suppression, it is to be noted that the landlord in the cause title itself had indicated that he is residing in Flat No. 27/3 in Building No. 27, Apte Colony, Survey No. 232, Bhosari, Pune. In the cross-examination, there is no doubt, reference to such flat having three rooms. In paragraph 24 of the Appeal

1 2004(supp.) Bom.C.R.333

Court's judgment, there is record that the learned counsel for the landlord having fairly conceded that the landlord is in possession of five rooms. This cannot be regarded as any suppression, muchless suppression of vital fact. The circumstance that the flat, in which the landlord presently resides is of three rooms or five rooms, is not vital in the peculiar facts and circumstances of the present case. There is record that the landlord resides in the said flat alongwith his wife, two children and aged mother. The two children have also attained majority. In these circumstances, even if we are to proceed on the basis that Flat No. 3 comprises five rooms, the same would no make difference in so far as the issue of reasonable and *bona fide* requirement is concerned.

5] Besides, it is to be noted that the landlord and the tenant are neighbours. Both of them reside in Apte Colony. In such circumstances, it is too much to presume that the petitioner-tenant was unaware of the precise dimension of the house which is presently occupied by the landlord. In any case, the issue of three rooms or five rooms, in the context of size of the landlord's family is almost an irrelevant circumstance in determining the reasonableness and *bona fides* of the requirement.

6] In case of *Tarachand Shamdasani (supra)*, the landlord had suppressed the factum of ownership and possession of several other premises other than the premises in which the landlords was stated to be staying. It is in those circumstances, the landlord was non-suited and his requirement was held as not being *bona fide*. The fact situation in the present case is quite different and as such decision in the case of *Tarachand Shamdasani (supra)*, will not apply.

7] Accordingly, no case is made out to interfere with the impugned order. This petition is dismissed. There shall, however, be no order as to costs.

8] At this stage, Mr. Godbole applies for stay on execution of the eviction decree for a period of eight weeks as the petitioner desirous to take recourse against this judgment and order. Request is reasonable and is therefore, granted subject to the petitioner and his family members filing an usual undertaking, in this Court, within a period of two weeks from today, that only they are in possession of the suit premises and they will not part with such possession or create any third party interest therein.

(M. S. SONAK, J.)