

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7003 OF 2014

Shri. Anant G. Joshi and ors. .. Petitioners

vs.

Smt. Shantabai M. Kokane
(since deceased through her
Legal Heirs 1/1. Shri. Suresh M. Kokane
and ors) .. Respondents

Mr. A.A. Garge i/b Mr. Kashyap Bhalerao for the Petitioner.
Ms Anjali N. Helekar for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 06 AUGUST 2015.

P.C. :-

1] This petition challenges the judgments and decrees dated 27 January 2009 and 20 March 2014 made by the Trial Court and the Appeal Court directing the eviction of the petitioners from the suit premises on the ground that the respondent-landlords required the same reasonably and *bona fide*.

2] Mr. A.A. Garge, learned counsel for the petitioners, has submitted that the findings of fact recorded by the two Courts are perverse. In any case, Mr. Garge submitted that the subsequent events in the context of demise of plaintiff No.1 have not at all been taken into consideration. Mr. Garge submitted that the evidence on record makes out a clear case that the respondent-landlords have in

their possession, premises, altogether ad-measuring more than about 1200 sq.ft. Besides, the respondent No.1/2 has also acquired an apartment ad-measuring about 510 sq. ft in Sudanshu Chamber. If all these materials are taken into consideration, then it is quite clear that the need of the landlords was neither reasonable nor *bona fide*. Mr. Garge further submitted that the aspect of comparative hardship is required to be considered separately, even after recording the conclusion that the landlords have made out a case for reasonable and *bona fide* requirement. That having not been done in the present case, the impugned judgments and decrees are in excess of jurisdiction and are therefore, required to be set aside. Mr. Garge placed reliance upon the decision of Apex Court in case of *Ansuyaben Kantilal Bhatt vs. Rashiklal Manilal Shah*¹, to submit that cognizance is required to be taken of subsequent events. Mr. Garge also placed reliance upon the decision of this Court in case of *Bismilla Bee w/o. Sk. Chand; Khajamiyan S/o. Sk. Chand vs. Mohd. Anwar S/o. Mohd. Akhtar*² to submit that the aspect of comparative hardship has to be taken into consideration, even after record of any finding that the need of landlord is reasonable and *bona fide*.

1 1997 Lawpage (SC) 70

2 2010 (1) ALL MR 8892601

3] Ms Helekar, learned counsel for the respondent-landlords on the other hand, submitted that in the present case there are concurrent findings of fact recorded by the two Courts and therefore, this Court in exercise of writ jurisdiction ought not to interfere with the same. Ms Helekar pointed out that this Court, under Article 227 of the Constitution of India, does not exercise appellate jurisdiction. That apart, Ms Helekar pointed out that the two Courts have correctly appreciated the evidence on record and have also independently assessed the issue of comparative hardship. Ms Helekar pointed out that in the present case, possession of the apartment in Sudanshu Chambers has not been received by respondent No.1/2 and further, the petitioners have their own premises in Thane and Dombivali. For all these reasons, Ms Helekar submitted that this petition is liable to be dismissed.

4] Having heard the learned counsel for the parties and perused the material on record, in my judgment, no case is made out to interfere with the concurrent findings of fact recorded by the two Courts. The findings of fact are borne from the material on record and this is not a case where relevant evidence has been excluded.

5] The two Courts have correctly assessed the evidence on behalf of the respondents. The plaintiff No.1, who was 84 years old at the time of deposition may appear to have stated some inflated areas with regard to the premises already in their possession. However, the correct perspective has been placed on record by respondent No.1/2 and other witnesses, who deposed on behalf of the respondents. The material on record establishes that the respondents have in their possession of two rooms ad-measuring of 255 sq. ft. each in the same building where the suit premises are located. That apart, there is also one more room on the higher floor ad-measuring about 255 sq.ft. However, there is evidence on record, which is supported even by the petitioners that the staircase to this room as well as the room itself is not in a proper condition and cannot be inhabited. The respondent No.1/2, who is an advocate by profession, has admitted to the purchase of apartment ad-measuring 510 sq. ft in Sudanshu Chambers. However, the builder/developer who was examined has deposed that the building is yet to have water supply and lift. The builder/developer has also deposed that no Completion Certificate has yet been issued and that the respondent No.1/2 has not obtained possession of the said apartment.

6] The suit for eviction was instituted by Smt. Shantabai Kokane, when she was 81 years of age. In the plaint, there are pleadings that the suit premises are required for not only her reasonable and *bona fide* requirement but also for requirement of her sons and other family members. One of the reasons stated was that the said plaintiff requires rest and peace and possession of additional area would achieve the said purpose. The second reason stated was that the plaintiff has two sons Suresh and Uday. Uday has one daughter and Suresh has two children. In all, including the plaintiff there are eight persons in the family and the premises in which they presently reside are not at all sufficient. The third reason stated was that Uday has passed his LLB examination and proposes to commence legal practice. For all these purposes, additional place is required.

7] In the plaint, there were averments in paragraphs '4' and '9' that the petitioners have alternate residential premises at Thane and Dombivali in which they are reside. In written statement filed by the petitioners, there is no response whatsoever to these averments in paras '4' and '9' of the plaint. Accordingly, such averments are deemed to have been accepted. Even otherwise, the petitioners in the course of of their depositions have accepted this position, but

only disputed the correctness of the area.

8] The Two Courts have correctly appreciated the material on record and returned findings as to reasonable and *bona fide* requirement. The Trial Court decreed the eviction suit on 27 January 2009. At that stage, the original plaintiff Shantabai was very much living. Shantabai, however, expired some time in the year 2011, at the stage when the appeal was pending. No doubt, as has been held by the Apex Court, cautious cognizance can always be taken of the subsequent events. The decision in case of *Ansuyaben Bhatt (supra)*, however, is clearly distinguishable. In the said case, the need pleaded was of the husband to undertake business. In the said circumstances, the Apex Court ruled that by the time the matter was being decided, since the husband was 87 years of age, the said need stands eclipsed. The position is quite different in the present case. Smt. Shantabai may have expired in the year 2011, but the need pleaded by Shantabai was not merely of her own, but also that of her family members, i.e., her two sons and their family members. There is absolutely no material on record and none was demonstrated to even suggest that the need of family members of late Shantabai stood eclipsed on account of any subsequent events.

9] In this case, the two Courts after recording the findings on the aspect of reasonable and *bona fide* requirement have separately and independently assessed the issue of comparative hardship as per the mandate of Section 16(2) of the Maharashtra Rent Control Act, 1999 (Rent Act). In this context, the admission in the pleadings by way of non-traverse as also specific admission in the depositions of the petitioners with regard to acquisition of alternate premises at Thane and Dombivali have been rightly taken into consideration. The Two Courts have considered the premise of acquisition of the premises in Sudanshu Chambers by respondent No.1/2, but given due consideration to the circumstance that the possession thereof was not with respondent No.1/2 for lack of Completion Certificate and the absence of basic facilities like lift and water supply.

10] Accordingly, the two Courts have recorded the concurrent findings of fact and the same are not vitiated by any jurisdictional error or perversity. For all the aforesaid reasons, this petition is dismissed. There shall, however, be no order as to costs.

11] At this stage, Mr. Garge prays for a restraint upon the execution of eviction decrees for a period of at least twelve weeks, as

the petitioners seek to take recourse against this judgment and order before the Apex Court. This is opposed by Ms Helekar. The restraint for eight weeks is reasonable and therefore, subject to filing of usual undertaking in this Court, within two weeks from today, the decrees of eviction shall not be put into execution for a period of eight weeks from today. The petitioners to furnish copy of undertaking to the learned counsel for the respondents before the same is filed in the Registry. Such undertaking to be filed by all the petitioners and family members, who have attained the age of majority.

12] All concerned to act upon the authenticated copy of this order.

(M. S. SONAK, J.)

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