

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1692 OF 1997

Shaikh Amir Ahmed, since deceased
by his legal representatives
Smt. Mumtaz Amir Shaikh & Ors. .. Petitioners
VS.
Kassam Mubarak Shaikh, since deceased
by his legal representatives
Smt. Rabiabi Kassam Shaikh & Ors. .. Respondents

Mr. S. G. Deshmukh for Petitioners.
Mr. Vilas B. Tapkir for Respondent Nos. 1(A) to 1(G).

CORAM : M. S. SONAK, J.
DATE : 27 AUGUST 2015

P.C. :-

- 1] Heard the learned counsel for the parties.
- 2] Although this petition is of the year 1997, for reasons which are indicated hereafter, there is really no option other than, to remand the matter to the Trial Court for reconsideration on the aspect of acquisition of alternate premises by the petitioner – tenant.
- 3] The respondent – landlord, had instituted Civil Suit No. 430 of 1990, inter alia on the grounds of subletting and acquisition of alternate premises. The Trial Court, decreed the suit on both the grounds. The Appeal Court, by judgment and decree dated 15 January 1997 has however held that the ground of subletting by the

defendant no. 1 in favour of the defendant no. 2 was not established. The Appeal Court has further held that the defendant no. 2 i.e. the present petitioner, was the tenant in respect of the suit premises. Further, on the ground that the defendant no. 2 i.e. the petitioner herein, has acquired alternate premises, decree of eviction has been made by resort to the ground contained in Section 13(1)(l) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Rent Act").

4] The Appeal Court, in making the impugned judgment and decree dated 15 January 1997 has placed reliance upon two affidavits. The first affidavit is of the landlord Kassam Mubarak Shaikh dated 2 August 1996, which states that the petitioner has acquired alternate residence in House No. 355 Ghorpade Peth, Pune. The second affidavit is of one Abdul Kadar Ahmed Menon dated 17 August 1996 – the owner of House No. 355 Ghorpade Peth, Pune, who has stated that the petitioner was the tenant of House No. 355 Ghorpade Peth, Pune. Both these affidavits, have been taken into consideration by the Appeal Court, which is evident from paragraph 22 of the judgment and decree dated 15 January 1997.

5] In the plaint as also in the evidence, the landlord had alleged

that the petitioner has acquired alternate premises No. 357 (new) Ghorpade Peth. In the two affidavits before the Appeal Court there was no explanation offered with regard to the two House Nos. 355 and 357. In this Court however, the landlord has filed an affidavit to state that there was amalgamation of House Nos. 355 and 357 and the new No. is 355. This explanation is obviously disputed by the petitioners. Further, the learned counsel for the petitioners has submitted that the petitioners had only endorsed no objection to the taking on record of affidavit dated 2 August 1996, provided, the petitioners counter affidavit in response to the same is taken on record. At no stage, the petitioners had been furnished with the copy of the affidavit dated 17 August 1996 made by Abdul Kadar Ahmed Menon and therefore there was no response filed by the petitioner to the said affidavit.

6] There is no record, to indicate that affidavit dated 17 August 1996 was indeed served upon the petitioner and the petitioner was afforded opportunity to file a counter to the same. That apart, the material concerning so-called amalgamation between the two house numbers is purported to be produced for the first time before this Court. In such circumstances, the only course that can be effectively followed is to remand the matter for resolution of this issue.

7] There is yet another issue, which could be appropriately

resolved on the basis of remand. Mr. Deshmukh has contended that for the ground under Section 13(1)(l) of the Rent Act to operate, an alternate suitable residence has to be acquired after the defendant becomes tenant of the suit premises. At this stage, it would be premature to decide the validity of this contention. Neither the pleadings nor the evidence on this score is quite clear. In such circumstances, since the matter, having been remanded to the Trial Court, at the request of the learned counsel for the landlords, leave is granted to amend paragraph 5 of the plaint so as to make a clear averment in the context of acquisition of alternate premises by the petitioners. Similarly, leave is also granted to the petitioners to amend their written statement and file a response. It is made clear that at this stage, the Court has not gone into the issue as to whether the contention of Mr. Deshmukh in so far as interpretation of Section 13(1)(l) of the Rent Act is concerned, is right or wrong. Such contention is however left open for decision by the Trial Court in the first instance. The parties, upon remand, shall be entitled to lead evidence on all aspects of acquisition of alternate premises, including in particular on the aspect of the date of acquisition as also the discrepancy in the house numbers.

8] Necessary amendments to be carried out within a period of four weeks from the date of production of authenticated copy of this order before the Trial Court.

9] In view of the aforesaid, the two impugned orders to the extent they direct the eviction of the petitioners on the ground of acquisition of alternate premises are set aside. The matter is restored to the Trial Court for deciding afresh as per the observations contained in this order. The Trial Court to dispose of the suit within a period of one year from the date of production of authenticated copy of this order.

10] The parties to appear before the Trial Court on 14 September 2015 at 11.00 a.m. and produce authenticated copy of this order.

11] Registry is directed to remit the records to the Court of Small Causes, Pune, on or before 14 September 2015.

12] This petition is disposed of in the aforesaid terms. Rule is discharged.

13] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)