

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 500 OF 1997

M/s. F. D. Mehta & Co. & Anr.	..	Petitioners
vs.		
Central Bank of India	..	Respondents

Mr. Madhav Jamdar for Petitioners.
Mr. G. S. Godbole with Mr. T. N. Tripathi for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 03 July 2015
Date of Pronouncing the Judgment : 14 July 2015

JUDGMENT :-

1] This petition is directed against the judgment and order dated 29 August 1996 (impugned judgment and order) made by the appellate bench of the Small Causes Court (Appeal Court) in appeal no. 209 of 1994.

2] The respondent – Central Bank of India (CBI), a nationalised bank is the owner of Standard Building at Dr. Dadabhoy Naoroji Road, Fort, Mumbai 400001. A portion of the premises therein, being premises admeasuring about 2911 sq. ft. and 6300 sq. ft. respectively on the ground floor of the Standard Building (suit premises) were let out by the CBI to the appellants (Mehtas) for monthly rent of Rs.385.36 and Rs.2172.61 respectively. In January

1976, the CBI instituted R.A.E. & D. Suit No. 21/185 of 1976 in the Court of Small Causes Court at Mumbai seeking eviction of Mehtas, *inter alia* on the ground that the suit premises were reasonably and bonafide required by the CBI for its own use and occupation. By judgment and decree dated 19 January 1994, the said suit was dismissed by the Small Causes Court (trial Court). By the impugned judgment and order dated 29 August 1996 however, the appeal Court has set aside the judgment and decree dated 19 January 1994 and ordered the eviction of the Mehtas from the suit premises. Hence, the present petition.

3] Mr. Madhav Jamdar, the learned counsel for the Mehtas made the following submissions in support of the petition:

(A) The finding recorded by the appeal Court that the suit premises were reasonably and bonafide required by the CBI is vitiated by perversity, in as much as relevant evidence has been totally ignored and irrelevant evidence or even non existing material has been taken into consideration. Besides, in the record of such finding, the appeal Court has applied patently incorrect tests or principles. Further, the aspect of comparative hardship has also not been considered in its proper perspective;

(B) The appeal Court has failed to exercise jurisdiction

vested in it by ignoring subsequent events, which established that the CBI, after institution of the present proceedings, has acquired possession of several other premises, thereby rendering it unnecessary and even unreasonable, to insist upon the recovery of possession of the suit premises;

(C) The appeal Court failed to accord due credence to notification dated 5 October 1989, issued under the Bombay Metropolitan Region Development Authority Act, 1974, in terms of which, there is a statutory bar to the use of the suit premises for banking purposes. In the light of such bar, no decree of eviction ought to have been made in favour of the CBI, which proposed to use the suit premises for banking purposes.

4] Mr. G. S. Godbole, the learned counsel who appears for the CBI defended the impugned judgment and order by pointing out that the notification dated 5 October 1989 neither applies to the location where the suit premises were situated nor did it bar the use of the suit premises for banking purposes. Mr. Godbole pointed out that the appeal Court has based its findings on the material available on record and there is no perversity whatsoever in the record of the same. Subsequent events have been taken into consideration in the proper perspective and there is neither any failure to exercise

jurisdiction, nor has the jurisdiction been exercised in an arbitrary and unreasonable manner. Mr. Godbole pointed out that the CBI is a nationalised bank and it reasonably and bonafide requires the suit premises for its own purpose. The Mehtas have a very strong financial background, but have not demonstrated any efforts made by them for acquisition of alternate premises. For all these reasons, Mr. Godbole submitted that there is no reason to interfere with the impugned judgment and order.

5] The rival contentions now fall for determination.

6] This Court, whilst exercising jurisdiction under Articles 226 and 227 of the Constitution of India does not act as a Court of appeal and therefore the scope of interference with findings of fact, is quite limited. Unless it is demonstrated that findings of fact are vitiated by clear perversity or that the view taken is manifestly incorrect and suffers from errors apparent on face of record, there is no question of any interference.

7] In the case of *M/s. India Pipe Fittings Co. vs. Fakruddin M. A. Baker & Anr.*¹, the Apex Court observed thus:

“The limitation of the High Court while exercising power under Article 227 of the Constitution of India is well settled.

1 AIR 1978 SC 45

Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts howsoever erroneous those may be. It is well settled and perhaps to late in the day to refer to the decision of the Constitution Bench of this Court in (Waryam Singh v. Amaranath), 1954 S.C.R. 565 : A.I.R. 1954 S.C. 215 where the principles have been clearly laid down as follows:

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., (in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee), A.I.R. 1951 Cal. 193 (SB) to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not in correcting mere errors.”

8] In the case of *Bahutmal Raichand Oswal vs. V. R. Tarte*², in the context of proceedings between landlord and tenant under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Apex Court, relying upon its previous decision on the same subject, observed thus:

“If error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of Certiorari it should follow a fortiori that is not subject to correction by the High Court in exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a Superior Court can do in exercise of its statutory power as Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of Appeal when the Legislature has not conferred a right of

2 AIR 1975 S.C. 1297

appeal and made the Subordinate Court or tribunate final on fact.”

9] In the case of *Ashok Kumar & Ors. vs. Sita Ram*³, the Apex Court in the context of scope of interference with the findings of fact recorded by the authorities under the Rent Act has observed thus:-

“The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where order passed by the statutory authority vested with power to act quasi judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case.”

10] The submissions made by Mr. Jamdar, shall therefore have to be examined in the light of the restrictive parameters of interference

3 (2001) 4 SCC 478

with findings of fact. This Court is neither entitled nor expected to convert itself into an appellate authority and re-appreciate the entire material available on record. Interference with findings of fact recorded by the appeal Court may be warranted, only if it is established that the findings of fact are vitiated by clear perversity or that the view taken suffers from errors apparent on face of record and occasions manifest injustice.

11] The contention with regard to the notification issued by the Bombay Metropolitan Region Development Authority appears to be a *red herring*. In these proceedings reference was made to a note dated 4 January 1994, which purports to explain BMRDA's notification dated 10 June 1977 and 5 October 1989. The significance of such note, is by no means clear. The evidentiary value of such a note is also equally circumspect. The note makes some reference, possibly, in an entirely alien context to business offices and exchanges being permitted in suburbs and extended suburbs and that such establishments shall not be allowed in Island City of Bombay comprising of 'A' to 'F/North' to 'G/North' Wards. There is no co-relation between these locations and the location of the suit premises. Mr. Godbole, the learned counsel for the CBI submitted that the suit premises are not located in such area and in any case, there is no bar under any provisions of the Bombay

Metropolitan Region Development Authority Act, 1974 or the notification issued thereunder from time to time to the carrying out of banking activities from the suit premises. Mr. Godbole also pointed out that in the Standard Building, upon other floors, the CBI has carried out and continues to carry on the business of banking without any objection or hindrance from any of the planning authorities. From the notifications dated 10 June 1977 and /or 19 March 1979 or 5 October 1989, or from the notes accompanying the same, no case is made out by the Mehtas establishing any bar to the user of the suit premises for the purposes of banking business. The appeal Court, has quite correctly rejected such contention of the Mehtas.

12] On the aspect of reasonable and bonafide requirement, Mr. Jamdar made reference to advertisement issued by the CBI on 12 May 1975 proposing to sell the premises at Standard Building and inviting bids. Mr. Jamdar, the learned counsel for Mehtas submitted that such advertisement was issued in May 1975 and the suit seeking eviction of the Mehtas on the ground of alleged bonafide and reasonable requirement came to be instituted in January 1976. In the entire evidence led by and on behalf of CBI, there is no explanation whatsoever as to how some reasonable and bonafide requirement surfaced, when hardly six months prior to the same,

the CBI had put up the very premises for sale in the open market. Mr. Jamdar vehemently submitted that this single circumstance strikes at both reason-ability as well as bonafides of the alleged requirement.

13] Although it is true that the CBI had advertised for sale of premises at the Standard Building on 12 May 1975, it may not be correct to say that there is no explanation whatsoever as to the need of the suit premises for user by the CBI. Ultimately, the evidence on record, has to be appreciated in the context that the CBI is a nationalised bank, whose business activities were expanding and there was necessity of additional premises. In the course of the evidence, it has been demonstrated that there was necessity of additional premises. The Assistant General Manager, In-charge of the General Administration Department of the CBI stated that there was proposal to shift certain departments from the main building as well as the Standard Building into the suit premises, so as to accommodate the Foreign Bills Department and the Bombay Metropolitan Zonal Office so as to ensure smooth operations. The witness has also deposed to the manner in which the premises already in possession of the CBI are being utilised for its purposes and the necessity of the additional areas now occupied by the Mehtas. The appeal Court has also rightly held that the mere

circumstance that an advertisement was issued proposing sale of certain premises in the Standard Building, could neither be construed as a bar to seeking of eviction of Mehtas on the ground of reasonable and bonafide requirement, nor could such circumstance lead to the inference that requirement was neither reasonable nor bonafide. The appeal Court has rightly observed that the material on record has to be construed in its entirety. Due credence has to be given to the circumstance that the CBI is a nationalised bank and its business activity is expanding. It is in this context that the requirement of the CBI has to be appreciated. The appeal Court has also rightly taken into consideration the law on the subject, which requires a landlord to merely establish that the requirement is genuine, bonafide and reasonable. There is no necessity for a landlord to establish that there is some kind of dire need or some pressing circumstance in the matter of requirement of the premises.

14] Mr. Diwakar Uphalekar, the Secretary of the Board of the CBI (in the year 1976) has also deposed to the need of the CBI in relation to the suit premises. The said witness, did make reference to some knowledge being obtained from one broker Mr. Rao that the Mehtas intended to sublet or transfer the suit premises to third party. However, that by itself, does not render the need of the CBI any less bonafide or reasonable. The findings recorded by the

appeal Court that the requirement of the CBI is both bonafide and reasonable in the facts and circumstances, cannot be held to be vitiated by any perversity. This is not a case where relevant evidence has been ignored or that some irrelevant materials have been taken into consideration. Due credence has also been accorded by the appeal Court to subsequent events.

15] Mr. Jamdar pointed out that after the proceedings were initiated against Mehtas, the CBI has acquired possession of several other premises, including in particular premises in the Standard Building itself. Mr. Jamdar also emphasized that in Chandramukhi Building at Nariman Point, the CBI has acquired almost seven floors on ownership basis, thereby acquiring possession of in all eleven floors at the Chandramukhi Building. Mr. Jamdar submitted that in the year 1987, the bank also acquired possession of almost 4200 sq. ft. area in the Standard Building itself from Sholapur Spining & Weaving Co. In 1992 the bank acquired further area of about 250 sq. ft. from the same company. In Janambhoomi building, the CBI acquired further premises admeasuring around 3000 to 4000 sq. ft. and in Islam building, premises admeasuring around 2000 sq. ft. If all these subsequent events were to be taken into consideration, Mr. Jamdar submitted that no eviction order would at all have been made against Mehtas.

16] The appeal Court has not ignored the subsequent events. The appeal Court has indeed considered the circumstance that from time to time the CBI has obtained possession of additional premises. However, the evidence on record bears out that the requirements of CBI were ever-growing. The CBI, being a nationalised bank, has several branches and several offices to cope up with its varied activities in the banking sector. Therefore, this is not a case where it can be said that the requirement of the CBI ceased to be reasonable or bonafide on account of acquisition of additional premises, including some additional premises in the Standard Building itself, during the pendency of proceedings. Mr. Godbole is further right in his submission that just as, the CBI acquired additional premises during the pendency of these proceedings, the CBI also lost possession of several premises during the said period. Mr. Godbole pointed out that under the Maharashtra Rent Control Act, 1999, which repeals 1947 Act, the protection of the Rent Act has been made inapplicable to any premises let or sublet to banks or any public sector undertakings established by or under any Central or State Act. As a result, the CBI has lost the protection of the Rent Act and is facing evictions from several premises held on lease or sub lease by the CBI. Reference was made to some of the premises, from which the CBI

has had to face evictions, during the pendency of the present proceedings. There is reference to CBI having to vacate premises admeasuring 3645 sq. ft. in Churchgate area, which were let out to the CBI by the ICICI. There is reference to the CBI having to vacate premises admeasuring 6401 sq. ft. on the 8th floor of the Chandramukhi Building at Nariman Point. The CBI has produced on record judgments and decrees made by the competent courts with regard to eviction of the CBI from such premises. Obviously therefore, even these subsequent events shall have to be taken into consideration for determining the bonafides and reason-ability of the CBI's requirement.

17] Mr. Jamdar also placed reliance upon the decision of the Apex Court in the case of *Gaya Prasad vs. Pradeep Srivastava*⁴, to submit that subsequent events have to be taken into consideration to examine whether the requirement continues to be reasonable and bonafide. There is no dispute about that proposition. The decision in the case of *Gaya Prasad* (supra) however, does not assist the Mehtas. Therein, the Apex Court has clarified that subsequent events may in some situations be considered to have overshadowed the genuineness of the landlord's need, but only if they are of such nature and dimension as to completely eclipse such need and make it lose significant altogether. The Apex Court

4 (2001) 2 SCC 604

noted that longer the life of litigation the greater would be the number of developments taking place during the interregnum. Besides, in the present case, the appeal Court has indeed taken into consideration the subsequent events. The material on record does suggest that whilst the CBI, has during the pendency of this litigation obtained possession of some premises in the vicinity, the CBI has also lost possession of some other premises in the vicinity. This is therefore not a case where the bonafide requirement of the CBI has been eclipsed or rendered unreasonable. Rather, considering the circumstance that the CBI has lost possession of large areas and further, from 31 March 2000 (the date of coming into force of the Maharashtra Rent Control Act, 1999), the CBI is excluded from the protection of the Rent Control Act, the need of CBI to recover its own premises is rendered quite dire and not just reasonable and bonafide.

18] Mr. Jamdar, relying upon the decision of this Court in the case of *Sitaram Narayan Shinde & Ors. vs. Ibrahim Ismail Rais & Ors.*⁵, submitted that the pleadings in the present case had merely stated that the suit premises were required by the CBI reasonably and bonafide and that such pleadings were by no means sufficient to secure a decree of eviction on the said ground. This Court in the case of *Sitaram* (supra) has held that it is not necessary for the

5 2005 (2) Bom. C.R. 427

landlord to prove absolute need, there must be some pleadings spelling out the need to enable the landlord to resist the claim. The decision, is not applicable to the facts and circumstances of the present case. The CBI, which is a nationalised bank, has pleaded that the suit premises were required reasonably and bonafide for its banking purposes. That apart, in the course of examination-in-chief, the witnesses for the CBI gave an indication as to the purposes for which the suit premises were needed. Unlike in the case of *Sitaram* (supra), this is not a case where Mehtas were taken by surprise. This is not a case where the Mehtas made any serious grievance in their written statement or in the course of their evidence that they were seriously prejudiced on account of any alleged vagueness in the pleadings. This Court, in the case of *Gaur Chandra Basu & Anr. vs. Ruchira Ashok Sonde & Anr.*⁶, has rejected the grievance about vagueness of pleadings, *inter alia* by observing that such an objection cannot sustain when at no point of time any objection was taken by the tenant that the evidence tendered for and on behalf of the landlord was beyond the leadings.

19] Mr. Jamdar, relying upon the decision of this Court in the case of *Tarachand Hassaram Shamdasani vs. Durgashankar G. Shroff & Ors.*⁷ and the decision of the Apex Court in the case of *S.*

6 2003 (1) Bom. C. R. 438

7 2004 (Supp.) Bom. C. R. 333

*P. Chengalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs. & Ors.*⁸, had submitted that the CBI had not given details of the premises already held by it in its plaint seeking eviction and therefore, the so-called need of the CBI could never have been held as bonafide. In the peculiar facts and circumstances of the present case, although it is true that no details as regards the premises already held by the CBI were set out in the plaint, the contention cannot be allowed to prevail. It must be noted that the CBI is a nationalised bank and therefore has premises / branches, possibly all over the State of Maharashtra, or for that matter all over the country. It cannot be reasonable to be expect that details of such premises be set out in the pleadings. The pleadings have to be construed reasonably. In the present case, in the examination-in-chief itself, reference was made to the other premises in the area / locality where the suit premises are located. Besides unlike, a private landlord, it cannot be said that the Mehtas were really unaware of the number of branches through which, the CBI functioned or operated in the Fort area or the locality where the suit premises are located. This is not a case of suppression, much less any deliberate suppression, with a view to obtain decree by playing a fraud on the Courts. Accordingly, the principle in the case of *Tarachand* (supra) or *Chengalvaraya* (supra) is not attracted to the facts and circumstances of the present case.

8 (1994) 1 SCC 1

20] The appeal Court has also considered the issue of comparative hardship in its proper perspective. The material on record bears out that the average sale the Mehtas achieved from out of the suit premises was in range of Rs.40 to 50 lacs per month. This was stated by Minoo F. D. Mehta in his deposition recorded on 5 January 1994. The witness, in the course of cross-examination stated that the commissions obtained are in the range of Rs.2 lacs per month. This was the position in 1994. Therefore, this is not a case of a tenant, who will virtually have to face some economic death, in case they are evicted from the suit premises. The material on record indicates that the Mehtas have been using the suit premises for over 7 to 8 decades and have agencies of several shoe companies, including Bata Company. In the entire evidence, there is nothing brought on record by the Mehtas to indicate the efforts they have made for acquiring any alternate premises either upon receipt of notice of termination of tenancy from the CBI or during the pendency of the proceedings. For all these years, the Mehtas have made use of the suit premises for their commercial purposes, paying therefor meager rents, on account of the protection of the 1947 Act. The CBI, is a nationalised bank and therefore, element of public interest in its functioning, cannot be ruled out. As noted earlier under the Maharashtra Rent Control Act, 1999, the CBI has lost the protection of the Rent Act and is facing

evictions from the premises taken on rent by it. Further, having lost the protection of the Rent Act, the CBI is required to obtain premises on rent at the market rates. In such a situation, there is nothing unreasonable or malafide in the CBI seeking to recover premises owned by it from its erstwhile tenants. The comparative hardship, which will ensue by declining a decree of eviction to the CBI will be much higher than the hardship which will ensue to the Mehtas, if made to suffer a decree of eviction. It does not stand to reason that nationalised bank is required to obtain premises at market rates and the Mehtas, who apparently have a financial means as well as sufficient wherewithal to acquire alternate premises at market rates, continue in the suit premises against payment of standard rents which as noted earlier together amount to hardly Rs.2,500/- per month in respect of an area around 10000 sq. ft. in Fort, Mumbai. There is no unreasonableness or arbitrariness or perversity in the assessment of comparative hardship by the appeal Court.

21] There is accordingly no reason to interfere with the impugned judgment and order. The writ petition is dismissed. There shall be no order as to costs.

22] The respondent bank shall be entitled to withdraw the amounts towards reasonable compensation, if ordered and deposited in this Court by the petitioners.

(M. S. SONAK, J.)

Chandka

23] At this stage, the learned counsel for the petitioners seek for continuation of interim relief granted during the pendency of this petition for a further period of three months, as the petitioners seek to take recourse against this judgment and order. Subject to filing of usual undertaking within a period of one week from today and further subject to continuing payment of amounts towards reasonable compensation, interim relief is continued for a period of eight weeks from today.

(M. S. SONAK, J.)

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