

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

32 WRIT PETITION NO. 1738 OF 2015

SURESH GODUMAL @ GOVARDHANDAS WADHWANI
VERSUS
OMPRAKASH RAJARAM BASSAIYE AND OTHERS

Shri. Ajeet D. Kasliwal, Advocate, for petitioner.

Shri. S.R. Deshpande, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 13 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by learned Civil Judge, Senior Division, Aurangabad on Exhibit 120 filed in Rent Suit No.27/2007. Both sides are heard.

2) The suit is filed by present respondent for eviction for bona fide requirement under the provisions of the Maharashtra Rent Control Act. Issues are framed and in March 2013 the plaintiff closed his evidence. Defendant filed evidence on affidavit in July 2013 but after that he did not turn before Court even to face cross examination.

He went on filing various kinds of applications and ultimately on 7-10-2014 he filed application for amendment of written statement. The defendant wants to plead that after filing of the suit things have changed as sons of the plaintiff have acquired other premises for starting their business. He wants to describe those properties. It can be said that there will be contention that some premises of which possession was obtained belong to the plaintiff but at least one property mentioned in the proposed amendment does not belong to the plaintiff. By bringing these facts on the record defendant wants to prove that the case of bona fide requirement is not existing and things have changed since filing of the suit.

3) Learned counsel for the petitioner placed reliance on a case reported as **AIR 1991 SC 1760 (Gulabbai v. Nalin Narsi Vohra)** and submitted that subsequent developments need to be considered by the Court when the proceeding is filed under the provisions of Rent Control Act. On this point in subsequently decided case reported as **AIR 2001 SC 803 (Gaya Prasad v.**

Pradeep Shrivastava) the Apex Court has held that the subsequent developments cannot give benefit to the defendants. The facts giving rise to cause of action on the date of the suit need to be considered while deciding the suit by the Rent Court. The observations are at para 10 and they re as under :

"10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging th bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the final, after passing through all the previous levels of the

litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period."

4) In any case in view of provisions of Order 6 Rule 17 of the Civil Procedure Code it can be said that this step is taken only with intention to protract the decision of the suit. It cannot be said that the aforesaid developments were not within his knowledge when in the application itself he has mentioned that the aforesaid developments took place and he has the knowledge. Even there is such mention in para 9A of the amendment application. Evidence of the plaintiff is closed and now the defendant wants to bring such amendment on the record. This Court holds that only to protract the things the defendant is playing such tactics. As such amendment is not necessary for deciding the suit, this Court holds that the trial Court has rightly rejected the application. The petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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