

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

905 CRA NO. 304 OF 2015
WITH CA/2318/2016 IN CRA/304/2015

SHEETAL HYBRID SEEDS PRIVATE LIMITED AND ANOTHER
VERSUS

SHANTILAL MANGALCHAND LUNIYA AND ANOTHER

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Advocate for Petitioners : S.B. Deshpande
Advocate for Respondent 1 : U.S. Malte
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CORAM : T.V. NALAWADE, J.
DATED : 15th June, 2016.

ORDER :

1. The proceeding is filed to challenge the judgment and decree of Regular Civil Appeal No. 40/2013, which was pending in the Court of Principal District Judge, Jalna. Regular Civil Suit No. 284/2010 filed by present respondent - Shantilal for eviction under the provisions of section 16 (g) (m) of Maharashtra Rent Control Act, 1999 is decreed in his favour and the decree is given on the ground of bonafide requirement. Both the sides are heard.

2. Regular Civil Suit No. 386/2010 was filed by Shantilal against M/s. Sheetal Hybrid Seeds Company and one Suresh Omprakash Agrawal was shown as partner of this registered partnership firm. Suresh Agrawal was also made defendant in

the suit. The suit was filed in respect of one shop premises having size of 25 ft. x 9 ft. (225 sq. ft.), which is a portion of C.T.S. No. 267 situated at Grain Market, Jalna. In municipal record, this building is given house No. 1-13-83.

3. It is the case of plaintiff that the suit property was given to defendant on lease on monthly rent of Rs. 1500/- under the document of lease dated 15.7.1989. It is contended that there was agreement that defendant was to vacate the suit premises as soon as the defendant acquires his own premises for the business. It is the case of plaintiff that defendant owns and possesses many properties in Jalna city where defendant can shift the seed business. Contention was made that for some time, defendant was not using the suit premises and it was doing the business in other premises and so, the defendant was liable to vacate the premises.

4. It was contended in the plaint that plaintiff's sons were in need of premises as they wanted to start business in Jalna by shifting to Jalna and so, the possession of the suit property was necessary. It was contended that plaintiff had requested the defendant to vacate the suit premises, but defendant did not vacate the suit premises. It is contended that

registered notice was given to defendant, but it returned unserved. It is contended that notice sent under certificate of posting was served, but after that notice also, premises was not vacated.

5. Written statement at Exh. 13 was filed by defendant Nos. 1 and 2 together jointly. It was contended that Suresh Agrawal, defendant, who was shown as a person representing firm was no more director of the firm. It was denied that the plaintiff was in need of suit premises for starting the business for his sons. It was informed that one Tulshidas was director of the company.

6. On the basis of aforesaid pleadings issues were framed. There was issue as against defendant and he was expected to prove that he cannot represent defendant concern. Plaintiff examined himself and the Manager of the concern was examined by defendants. Initially affidavit of evidence was filed by Suresh Agrawal, but it was withdrawn and thus, evidence was given for defendant concern by its Manager Bhausahab More. The Trial Court dismissed the suit by holding that the exact purpose for which the premises was to be used by sons of plaintiff was not proved. It was observed that one son was doing

business at Aurangabad and other son was receiving education and so, the need was not bonafide. The circumstance that plaintiff was having two more shops in the same building was also considered against the plaintiff. District Court gave decree on bonafide requirement for use of family. As the decree is given only on the ground of bonafide requirement, this Court is not touching the other ground like non-user for the period of six months prior to the date of suit.

7. The plaintiff has examined himself to prove the ground of bonafide requirement. He has deposed that his elder son wants to do business in Jalna and for that, he is in need of suit premises. He admits that his family is having residential place at Aurangabad and in Aurangabad, his elder son is doing construction business under the name and style as 'Shanti Construction'. It can be said that there are two more shops in the same building and they are probably owned by plaintiff. In that regard, no record is produced by defendant though Bhausahab has given evidence that defendant had applied for collecting such record and defendant wanted to produce that record. It is up to the landlord to decide as to which premises will be proper and suitable for the business which landlord or his sons want to start at Jalna. The absence of action against other tenants

cannot lead to inference that landlord was not in need of suit premises for personal use. As against such evidence, there is evidence of Bhausahab that the plaintiff does not need the suit premises for business. Other evidence is vague in nature and no record is produced to show that there is other suitable premises with plaintiff where his son can start the business. If he is doing the business at Aurangabad of construction, he can start the business at Jalna also and it cannot be said that he is not entitled to start such business at Jalna. Bhausahab has given evidence for M/s. Sheetal Hybrid Seeds Company as it's Manager by saying that resolution was passed by company in his favour on 8.8.2012 for enabling him to conduct the matter for company. This evidence of Bhausahab cannot be ignored as peculiar defence is taken by the learned counsel for appellant defendant.

8. In view of nature of evidence given by plaintiff and nature of defence taken by defendant Suresh, it can be said that the evidence of Bhausahab has no base of pleadings. Suresh Agrawal has contended that he was not in a position to represent the defendant lessee or defendant private company or even the initial partnership concern and so, there was no written statement of the private company for which Bhausahab has given evidence. In view of these circumstances, the Trial Court

could have straight away given the decree of eviction. The First Appellate Court has corrected this error of Trial Court.

9. The learned counsel for petitioner submitted that in the past, partnership concern of which Suresh Agrawal was partner, was a lessee, but that partnership concern is not in existence and now a private limited company is in existence and Suresh Agrawal is not director of the said company. The lease document was signed by Suresh. Some record in that regard is produced. In view of the circumstance that one Bhausahab, Manager of this Company, has given evidence, it cannot be said that suit was not filed against the proper party. Before Trial Court the relevant record was not produced and there is nothing on record to show that the previous partnership concern had informed to the landlord that it was handing over the possession to the petitioner private limited company. In view of these circumstances, it can be said that the possession of this private limited company cannot be treated as possession of the original tenant, the partnership concern. On this ground also, decree could have been given of eviction against the legal entity which is saying that now it is occupying the suit premises. Such tactics are generally played to protract the decision of the matter and also to avoid to hand over the possession to landlord. In the

matter like present one, the misuse of process of law cannot be allowed. In view of these circumstances, this Court holds that it is not possible to interfere in the decision given by the First Appellate Court against the present petitioner.

10) Civil Application No. 2318/2016 is filed by the present petitioner to allow amendment of revision application to show that present private limited company is respondent and original defendants are shown as petitioners. In any case, the same learned counsel wants to argue for the old and new parties. In view of these circumstances, the application cannot be allowed. This Court holds that present petitioner was representing the lessee, the partnership firm as the possession was with partnership firm and there are aforesaid circumstances. The decision given by the Courts below will be binding on this private company also. So, the revision stands dismissed. The civil application is also rejected.

[T.V. NALAWADE, J.]

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