

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 6603 OF 1999

Smt.Najmunnissa Aslamkhan
Age about 42 years, Occu.
Teacher, residing at 42,
Prathamik Urdu Shala, District
Junnar, Dist. Pune.

.. Petitioner

Vs

1. Shri Fakruddin Nuruddin Butwala,
age 52 years, Occ: Business,
residing at 526, centre street,
Pune 411 001.

2. Shri Shabir Nuruddin Butwala,
age 49 years, Occ : Business, 526
Centre street, Pune – 411 001.

.. Respondents

Mr.A.I.Patel, for the Petitioner.

Mr.S.G.Surana a/w Madhur Surana, for Respondents.

***CORAM : N.M.Jamdar, J.
Wednesday, 16 November 2016.***

Oral Judgment :

By this Petition, the Petitioner tenant has challenged the Judgment and Order passed by the learned District Judge, Pune dated 10 September 1999 allowing the appeal filed by Respondents-landlord and setting aside the Judgment and Decree passed by the learned Small Causes Court Judge, Pune dated 24 August 1992.

2. The suit premises is one residential room situated at Nana Peth, Pune. The rent fixed was Rs. 10. The premises were initially let out to one Noorkhan Alikhan. After the death of Noorkhan, the Petitioner became tenant of the premises. Civil Suit No.68 of 1988 was filed by the Respondents-landlord for eviction of Petitioner on the ground that the premises are required by the Respondents-landlord for a reasonable and bonafide need for occupation of the family, on the ground that Petitioner has not paid the rent and has become defaulter, and that the suit premises have been locked continuously for a period of six months by the Petitioner. The learned Small Causes Court after considering the oral and documentary evidence on record negated the contention of Respondents / landlord and dismissed the Suit by Judgment and Order dated 24 August 1992. Civil Appeal No.432 of 1992 was filed by Respondents-landlord in District Court, Pune. The learned District Judge did not accept the case of Respondents as regards bonafide requirement and default committed by the Petitioner, however accepted the case of Respondents-landlord that the Petitioner has committed breach of provisions of Section 13(1)(k) of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 by not using the premises six months preceding the date of institution of suit. Accordingly, the learned District Judge allowed the Appeal by impugned Judgment and Order dated 10 September 1999.

3. I have heard Mr.A.I.Patel, the learned counsel for the Petitioner and Mr.S.G.Surana, the learned counsel for Respondents.

4. The claim of Respondents-landlord as regards bonafide requirement and default in payment of rent has been negated by both the Courts. The appellate Court has granted decree only on the ground provided under Section 13(1)(k) of the Bombay Rent Act. Section 13(1)(k) of the Act reads thus -

'Section 13 (1) (k) - that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit;'

The provision postulates that the landlord will be entitled to recover the possession of the tenanted premises if the premises have not been used with reasonable cause for the purpose for which they were let out for continuous period of six months immediately preceding the date of the suit. This provision contemplates that the premises are not only used for a period of six months immediately preceding the date of the suit but without reasonable cause for the purpose for which they were let out. In the present case, the relevant period is six months prior to 19 January 1988 when the suit was instituted. The Respondents-landlord had alleged that the Petitioner has shifted to Junnar where her husband was serving and residing. This case has been accepted by the learned District Judge.

5. The learned District Judge has observed that the version of the

Petitioner that she used to be in Pune at the weekends and used to stay in the suit premises deserves to be rejected because she has not pleaded any such case and also considering the preponderance of probability. Having gone through the record I find that both these grounds given by the learned district Judge to reject the case of the Petitioner and overturn the finding of the learned Civil Judge, are incorrect. The Petitioner had specifically pleaded that she was working as a teacher in Junnar on temporary basis and she used to go back to Pune on Saturday and she would go back to Junnar on Monday. It has come on record that the distance between Pune and Junnar is 70 to 80 kms. Pune being much larger city it is not impossible that from the place of work Petitioner would be travelling to Pune and Junnar and come back to Pune during weekends. Why this version is not probable is not stated by the learned District Judge before overturning the finding of the learned Civil Judge. The Petitioner has placed on record that her son was born in the suit premises and she has not taken any ration card at Junnar and it continues at Pune. She has also placed on record that she was working at Junnar on temporary basis. By taking up employment during the week at some other place and returning to the tenanted premises during the weekend cannot be stated to be abandoning the use of the premises neither it can be said that Petitioner had ceased to use the tenanted premises without reasonable cause. The evidence produced by the Petitioner which was discussed by the learned Small Causes Court Judge, has been discarded by the learned District Judge

in one paragraph. There is hardly any discussion as to why the documentary evidence produced by the Petitioner showing her occupation needs to be discarded, though the learned counsel for the Respondent tried to supported the finding of the learned District Judge ,the conclusion reached by learned District Judge is based merely on conjectures that too not in tune with the reality. There was no warrant for the learned District Judge to upset the factual finding rendered by the learned Small Causes Court Judge in the facts of the present case on the basis of mere conjectures. The Petitioner had placed ample evidence on record to show that the decree under section 13(1)(k) could not have been passed. The finding of the learned District Judge and assessment of evidence is perverse. It has resulted in manifest injustice. In the circumstances,a case is made out for interference.

6. The Petition deserves to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause (b). No order as to costs.

(N.M.Jamdar, J.)