

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 9341 OF 2014

Smt. Sunita Ramkrishna More ...Petitioner
Versus
Mr. Vijay Vithal Sardeshmukh ...Respondent

....
Mr.P.S. Dani, Senior Advocate i/b. Ketan Joshi, Advocate for the
Petitioner.
Mr.S.S. Patwardhan, Advocate for the Respondent.
....

CORAM : R. G. KETKAR, J.
DATE : 10th August, 2016

P.C.

1. Heard Mr.P.S. Dani, learned Senior Counsel for the petitioner and Mr.S.S. Patwardhan, learned Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'defendant', has challenged the judgment and decree dated 18.8.2014 passed by the learned District Judge-8, Pune in Civil Appeal No.121/2011. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as the 'plaintiff', and directed the defendant to hand over possession of the premises consisting of eastern two rooms having dimensions 12 ft. X 12 ft. and 7 ft. X 13 ft. located at the

extreme eastern ground floor of Building No.1098/2B, Model Colony, Pune-411 016 (for short, 'suit premises') failing which the plaintiff would be at liberty to recover it's possession in accordance with law.

3. The plaintiff has instituted the suit for recovery of the suit premises on two grounds, namely, non-user as contemplated under Section 16(1)(n) as also reasonable and bonafide requirement as contemplated under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). The learned trial Judge held that the plaintiff did not establish the ground of non-user. The learned trial Judge answered the issue of reasonable and bonafide requirement in favour of the plaintiff. The learned trial Judge, however, held that greater hardship would be caused to the defendant in the event of passing of eviction decree. Resultantly, the learned trial Judge dismissed the suit.

4. Aggrieved by this decision, the plaintiff preferred appeal. By the impugned order, the learned District Judge allowed the appeal. It is against this order, the defendant has instituted the present Petition.

5. In support of this Petition, Mr.Dani has invited my

attention to paragraphs-44 and 45 of the impugned order. In paragraph-44, the learned District Judge has observed that “the learned trial Judge has given sound reasons for arriving at conclusion that the plaintiff has established that his requirement is reasonable as also bonafide. Such findings are not challenged by the defendant by filing cross-objections.”

6. In paragraph-45, the learned District Judge referred to decision in the case of **Balwant P. Doshi v. Shantaben Dhirajlal Shah and another, 2003(2) Bom.C.R. 190**, wherein this Court has held that the Court cannot ordinarily doubt bonafide need of the landlord nor the tenant can dictate how landlord will use his premiss. The learned District Judge thereafter proceeded to observe that no evidence was adduced by the defendant to prove that it is not possible for her to secure any alternate premises in the same locality or any other city. He submitted that the learned District Judge has not discussed the evidence adduced by the parties for considering whether the plaintiff has established his reasonable and bonafide requirement. The Appellate Court being the last fact finding Court was under the obligation to reassess the entire evidence on record and record independent findings and conclusions

based on that evidence. In short, he submitted that the learned District Judge was of the view that as the defendant did not file appeal or cross-objections challenging the finding recorded by the trial Court on the issue of reasonable and bonafide requirement, the defendant is precluded from agitating that point.

7. On the other hand Mr.Patwardhan supported the impugned order. He submitted that as would be evident from paragraph-49 of the impugned order, the learned District Judge has held that the plaintiff has established bonafide requirement of the suit premises. After reassessing and reappreciating the facts and evidence on record, the learned District Judge held that the plaintiff has established his case of bonafide requirement. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier the learned trial Judge has dismissed the suit though the learned trial Judge held that the plaintiff has established that his requirement is both

reasonable as also bonafide. On the question of comparative hardship, the learned trial Judge held in favour of the defendant and eventually dismissed the suit. Aggrieved by this decision, the plaintiff preferred appeal. As the suit was dismissed, it was not necessary for the defendant to either file appeal or cross objection. Without filing appeal or cross-objection, the defendant can certainly support the decree passed by the trial Court and submit that the findings recorded against him by the trial Court should have been decided in his favour.

9. Perusal of the impugned order shows that the learned District Judge has not at all considered the evidence on record for the purpose of finding out whether the plaintiff has established the ground under Section 16(1)(g) of the Act. The Appellate Court being the last fact finding Court is obliged to reappraise and reassess the evidence on record and thereafter record its findings and conclusions. In the present case, I have already referred to the findings recorded in paragraph-49 of the impugned order. In my opinion, the Appellate Court did not discharge its duties while deciding the appeal. In view thereof, on this ground alone, the impugned order deserves to be set aside thereby restoring the appeal for *denovo* consideration.

Hence the following order :

- [i] Impugned judgment and decree dated 18.8.2014 passed by the learned District Judge-8, Pune in Civil Appeal No.121/2011 is quashed and set aside. Civil Appeal No.121/2011 is restored to the file of the District Court.
- [ii] By way of abundant caution, it is clarified that though the defendant has not filed either appeal or cross-objection, she is entitled to support the decree by contending that the findings recorded by the trial Judge on the question of reasonable and bonafide requirement should have been decided in his favour.
- [iii] Parties agree that they will appear before the District Court on 29.8.2016 and for that purpose no fresh notice be issued to them. The learned District Judge is requested to decide the appeal within three months from the date of appearance of the parties.
- [iv] All contentions of the parties on merits are expressly kept open.
- [v] All parties concerned, including the trial Court, shall act upon the authenticated copy of this order.
- [vi] Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)