

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No.9945 OF 2015

Sitaram Yabayya Gardas

... Petitioner

V/s.

Prabhakar Purushottam Modak

... Respondent

Mr. Nitin P. Deshpande for the petitioner

Mr. Kelkar i/b. Mandar Limaye for the Respondent.

CORAM: K.K. TATED, J.

DATED : MARCH 30, 2016

PC. :

1. Heard the learned counsel for the parties. This petition is filed by the tenant challenging the concurrent findings of facts recorded by both the courts below.

2. In the present proceedings, the respondent landlord filed civil suit No.422/2011 in the court of Additional Judge, Small Causes and Jt. Civil Judge, Senior Division Pune for vacant and peaceful possession of the suit premises i.e. a room admeasuring 10' x 10' situated on 1st floor in the building situated on CTS No.257, Ganj Peth, Pune on the ground of bona fide requirement.

3. The plaintiff pleaded in his plaint that he is in need of the suit premises for his personal use. It is the case of the plaintiff that there are 10 members in his family and they are residing in a room admeasuring 20' x 10' on ground floor, where the suit premises is situated. Considering the pleadings of both the parties, the Trial Court framed following issues:

	Points / Issues	Findings
1	Does the plaintiff proves that the suit premises are reasonably and bona fide required by him for him occupation and also for the occupation of his family member ?	Yes. Proved.
2	What findings regarding hardship ?	Plaintiff would suffer hardship
3	Does the plaintiff proves that the defendant has created nuisance and annoyance in the suit premises ?	Not proved.
4	Whether the plaintiff is entitled for the possession of suit premises?	Yes
5	What order ?	As below

4. The Trial Court, by judgment and decree dated 21.08.2012 held that the plaintiff has made out a case of bona fide requirement of the suit premises. The Trial Court also held that if a decree is not passed the plaintiff would suffer hardship.

5. Being aggrieved by the said judgment and decree, the petitioner tenant preferred civil appeal No.1025/2012 which was dismissed by the appellate court by judgment and decree dated 10.06.2015. Hence, the petition.

6. The learned counsel for the petitioner tenant submits that both the courts below erred in coming to the conclusion that the respondent plaintiff proved his bona fide requirement of the suit premises. He submits that after the date of judgment and decree passed by the appellate court, the defendant obtained No-Dues Certificate from Pune Municipal Corporation dated 22.09.2015 to show that the son of the plaintiff landlord has flats at Bibwewadi and Parvati at Pune. He submits that in view of subsequent development that the plaintiff's son

have flats at Bibwewadi and Parvati at Pune, this Hon'ble Court be pleased to set aside the judgment and decree passed by both the courts below. He submits that if the Writ Petition is not allowed, irreparable loss and injury will be caused to the defendant.

7. On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the Writ Petition. He submits that both the courts below, after considering the evidence on record and need of the landlord, decreed the suit and directed the defendant tenant to hand over vacant and peaceful possession of the suit premises to the plaintiff. The learned counsel for the plaintiff submits that the plaintiff and his 9 family members are staying in a room admeasuring 20' x 10' only. Hence, there is no substance in the Writ Petition. Same be dismissed with costs.

8. Heard. It is to be noted that there are concurrent findings of fact recorded by the courts below. The Apex Court in the matter of ***V.Sumatiben Maganlal Manani (dead) by L.Rs. Vs. Uttamchand Kashiprasad Shah and Anr. 2011 (6) MLJ 1*** held that the High Court, in exercise of its revisional jurisdiction, should not interfere with the findings of facts properly arrived at by the courts below. In the matter of ***Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC 100*** the Apex Court held that it is not permissible to the High Court to reappraise and re-appreciate the evidence for reaching a different finding in revisional jurisdiction. In the matter of ***Sunilkumar and Anr. Vs. Anilkumar 2008 (9) SCC 241*** the Apex Court held that normally, the High Court should not interfere with the concurrent findings of fact in Rent Act matters unless and until the orders passed by the courts below are perverse and contrary to law.

9. It is to be noted that the *bona fide* need is to be considered as per the need of the landlord and not on the basis of submission and/or suggestion given by the tenant. The Apex Court, in the matter of ***Sara Rauf and Anr. Vs. Durgashankar Ganeshlal Shroff* 2007 (4) MLJ 129** held that the landlord is a best judge of his essential requirements. He has complete freedom in the matter. It is no concern of the courts to dictate to the landlord, how, and in what manner he should live or to prescribe for him the residential standard of their own. There is no law which deprives the landlord of the benefits of his enjoyment of his property. Further in the matter of ***Kalpesh Hemantbhai Shah Vs. Manhar Auto Stores through its partners & ors.* 2014 SAR (Civil) 647** held that the High Court, under Article 227 of the Constitution of India has jurisdiction to correct the error, if apparent on the face of record but in absence of any question of law involved in the case, the High Court cannot alter such finding under Article 227 of the Constitution of India. Comparative hardship of tenant and landlord is a question of fact. In absence of any question of law involved with such fact, the High Court cannot alter such findings under Articles 226 and 227 of Constitution of India.

10. At the time of deciding the matter the courts below relied on the judgment in the matter of ***Balwant P. Doshi Vs. Shantaben Dhirajlal Shah and Anr.* 2003 (2) BCR 190.**

11. Perusal of the judgment of the courts below, copy of plaint and evidence shows that both the sons of the defendants are residing elsewhere and only the defendant and his wife are residing in the suit premises. The defendant in his cross-examination has admitted that the

plaintiff is facing inconvenience while residing in the premises in his occupation. The plaintiff has a room admeasuring 20" x 10" on the ground floor. The plaintiff has deposed that no space is available for study of his children. His parents are also remain ill and they cannot be taken care of properly in the premises available for him. His son Nilesh is running classes. The plaintiff is 74 years old. The premises in possession of the plaintiff is not sufficient for his family. The plaintiff is not financially sound to purchase a new premises. His sons Chinmay and Anupam are residing with the plaintiff and they are taking education in Pune. In all about 10 members in the family of the plaintiff are residing in a small room. This itself shows that the plaintiff is in reasonable and *bona fide* need of the tenanted premises which is in possession of the defendant. Considering these facts and the law declared by the Apex Court as stated hereinabove, I do not find any substance in the Writ Petition. Same stands dismissed.

12. At this stage, the learned counsel for the petitioner defendant submits that the defendant may be given some time to vacate the suit premises. At his request, one month's time is granted to hand over vacant and peaceful possession of the suit premises with usual undertaking to be submitted in this court within two weeks with copy to other side. It is made clear that if such an undertaking is not filed within stipulated time as stated hereinabove, the respondent plaintiff is entitled to execute the decree according to law. The defendant is restrained by an order of injunction from creating any third party right, title interest in respect of the suit property till handing over vacant possession to the plaintiff.

(K.K. TATED, J.)