

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 301 of 2015
[Babu Firoz Mohd. Hussain & another Vs. Ahmed Hussain Mumtaz Hussain]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. A.D. Dangore. Adv., for the appellants.
Mr. Muhammed Ateeque, Adv., for respondent sole.

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CORAM : A.B. CHAUDHARI, J.

DATE : 21st March, 2016

Heard Mr. Dangore, learned counsel for the appellants.

Being aggrieved by the concurrent findings of facts and the decree passed by the Courts below for eviction and arrears of rent against the appellants, defendants - tenants and in favour of the respondent, plaintiff - landlord, the present Second Appeal has been filed in this Court.

In support of the appeal, learned counsel for the appellants submits that for over two decades, the appellants have been residing as tenants with their family members. The notice under Section 107 of the

Transfer of Property Act was not served on the wife of the appellant no.1, husband, though it was served on the husband and that is not the compliance of notice for termination of tenancy in accordance with law, which gives rise to a Substantial Question of Law. He further argued that admittedly, the respondent, landlord, is bachelor and he is also residing with his brother in the neighbouring house and as such there is no bona fide need for him to have the occupation of the house in question. There was no evidence of the appellants remaining in arrears of rent and still the Court has passed a decree for arrears of rent. In the alternative, he submitted that the son of the appellants is studying in Xth Standard and, therefore, a reasonable time to vacate the premises should be granted without prejudice to contentions on merits.

Mr. Ateeque, learned counsel for the respondent, opposed the Second Appeal and submitted that there are concurrent findings of facts recorded by the courts below and there is no perversity in making the decree for eviction and arrears of rent. According to Mr. Ateeque, the bona fide need has to be seen from the date on which the suit was filed by the respondent, plaintiff. At any rate, the bona fide need of the respondent, landlord still exists, inasmuch as his wish is to reside in his own house and, therefore, tenants cannot dictate as to where the respondent, landlord, should reside in his last days. Even though, he is bachelor, his right to live in his own house cannot be diluted in any

manner. He then submitted that the appeal does not involve any Substantial question of Law and, therefore, the same be dismissed summarily.

Heard learned counsel for the rival parties. Perused the reasons recorded by the courts below.

Admittedly, there are concurrent findings of facts on the issue of bona fide need and the valid termination of tenancy. It is true that the notice [Exh.27] for termination of tenancy was issued to the husband only and not the wife. But then it is a trite law that there is no need to issue a notice of termination of tenancy to the wife. No Substantial Question of Law is involved in that context.

In so far as the aspect of arrears of rent is concerned, there is no decree in favour of respondent and, in fact, there is a denial thereof. In my opinion, the question regarding the bona fide need has been found by the courts below concurrently in favour of the respondent, landlord, and the same is based on evidence. The respondent still appears to have his bona fide need for occupying the house belonging to him. In fact, it is a matter of right of the landlord to have his house for his living not only physically, but also for satisfying his desire to live in his own house. Physical occupation of a house for a human being is not the only thing in the life as contended by the learned counsel for the appellants. Therefore, the angle from which the

bona fide need should be looked, must be changed and, therefore, it would be wrong to assume that only physical occupation of a house should be the criteria for finding out the bona fide need. That being so, as contended by learned Adv. Mr. Ateeque, the respondent, landlord, wants to live in his own house, and it is his utmost desire in his last days, which, in my opinion, must be given full respect and honour. In that view of the matter, I think the bona fine need has been fully established by the respondent, landlord and continues to be so even as on date. In that view of the matter, I find that the present appeal does not involve any Substantial Question of Law, and is required to be dismissed summarily.

In so far as the aspect of grant of time to vacate is concerned, I find that the appellants have a son, who is studying in Xth Standard and likely to appear for examination. In that view of the matter, it would be necessary to grant a reasonable time to vacate the premises, but subject to furnishing an Undertaking on Affidavit. In view of the above, I make the following order:-

ORDER

[a] Second Appeal No. 301 of 2015 is summarily rejected.

[b] The appellants are given time of five

months from today for vacating the tenanted premises, subject to furnishing an Undertaking on Affidavit. No further time beyond five months shall be granted for any reason, since the respondent, landlord, is unable to get the possession from the year 2005.

[c] No order as to costs.

Judge

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