

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3560 OF 1996

Suklal s/o Kalu Thorat,
since deceased, by his heirs
and legal representatives, namely

1. Shantabai w/o Suklal Thorat,
Age-49 years, Occu-Household work,
2. Tilottama Sudhakar Shejwal,
Age-40 years, Occu-Household work,
3. Aparna Suklal Thorat,
Age-29 years, Occu-Education,
4. Vijaya Suklal Thorat,
Age-27 years, Occu-Education,
5. Nita Suklal Thorat,
Age-24 years, Occu-Education,
6. Malini Suklal Thorat,
Age-22 years, Occu-Education,
7. Vishwambhar s/o Suklal Thorat,
Age-20 years, Occu-Education,
8. Kusum Suklal Thorat,
Age-17 years, Occu-Education,
9. Kumud Suklal Thorat,
Age-16 years, Occu-Education,

Petitioner Nos.8 and 9 are minor, through
Guardian Shantabai Suklal Thorat,

All R/o 314, Joshi Peth,
Jalgaon, Dist. Jalgaon

-- PETITIONERS

VERSUS

Ramkrushna s/o Hari Wani,
since deceased, by his heirs
and legal representatives, namely

1. Mangala w/o Ramkrishna Wani,
Age-60 years, Occu-Household,
2. Jagdish s/o Ramkrishna Wani,
Age-45 years, Occu-Business,
3. Damini d/o Ramkrishna Wani,
Age-40 years, Occu-Household,
4. Rajashri d/o Ramkrishna Wani,
@ Rajashri w/o Sunil Baviskar,
Age-40 years, Occu-Household,
5. Ashwini d/o Ramkrishna Wani,
@ Ashwini w/o Sachin Kamatkar,
Age-35 years, Occu-Household,
R/o : At & Post : Abhone,
Tq. and Dist. Nashik,
6. Amol s/o Ramkrishna Wani,
Age-31 years, Occu-Business,
7. Deepa w/o Amol Wani,
Age-25 years, Occu-Household,

All r/o 314, Joshi Peth,
Jalgaon, Dist. Jalgaon
Except respondent No.5.

-- RESPONDENTS

Mr.L.V.Sangit, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/07/2017

ORAL JUDGMENT :

1. By this petition, the petitioner seeks to challenge the judgment dated 28/10/1988 passed by the 5th Joint Civil Judge, J.D. Jalgaon in Regular Civil Suit No.530/1985 by which the original defendant was held guilty of causing nuisance and annoyance u/s 13(1)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the 1947 Act) and was directed to vacate the possession of the tenanted portion. The petitioner is further aggrieved by the judgment of the Additional District Judge, Jalgaon dated 20/06/1996 delivered in Civil Appeal No.322/1988, filed by the defendant, confirming the order of the Trial Court.

2. The petitioner/original defendant and the respondent/original plaintiff having passed away, are represented by their LR's.

3. Prayer clause 10(A) set out in the petition reads as under :-

“That, the record and proceedings of the judgment and order dated 28/10/1988 and 17/01/1998 passed by Vth Joint Civil Judge, J.D. Jalgaon in Regular Civil Suit No.530/1985 as confirmed by the judgment and decree, dated 20.6.1996 passed by Additional District Judge, Jalgaon in Civil Appeal No.322/88, be called for and after examining the legality, validity and propriety thereof, both the judgments and orders as mentioned above and annexed to the present writ petition at Exhs. A and B hereto be quashed and set aside, and the Regular Civil Suit

No.530/85 filed by respondent-plaintiff for possession be dismissed with costs;"

4. All the respondents, who are legal heirs of the original plaintiff Ramkrushna Hari Wani, have been brought on record and have been served by Court notice. Despite service and though this matter was adjourned on a number of occasions to enable them to participate in the proceedings, none have caused an appearance either in person or through an Advocate.

5. This petition was admitted by order dated 31/07/1996 and interim relief was specifically granted in the following terms :-

"Heard counsel for both parties.

Rule.

Interim stay as to possession on usual terms. It is made clear that it is open for the respondent landlord to have the use of terrace also if he so desires, through his own gate."

6. I have heard the submissions of Mr.Sangit, learned Advocate for the petitioners and, with his assistance, I have gone through the record available. He has relied upon the following 3 judgments :-

A) Amarchand Harakchand Kaswa Vs. Ramanlal Shantilal Porwal and others [1981 Bom.C.R.489]

B) Kashinath Shankar Gambhire Vs. Sudha Gopal Patil and

others [AIR 2000 Bom.493 = 2001(1) Mh.L.J. 672]

C) P.D.Trivedi Vs.Chandanben M.Shah [(1999) 1 GLR 355]

7. For the sake of brevity, the petitioners would be referred to as the original tenant and the respondents would be referred to as the original landlord, keeping in view their status before the trial Court.

8. The landlord who was in possession of the Municipal House No.314 in City Survey No.2659/10/2 at Joshi Peth, Jalgaon, had a double storeyed building. He owned the said building. He had a terrace on the 2nd floor which opened on to a '*Varanda*' admeasuring 13 x 9 feet. One room admeasuring 13 x 14 feet was being occupied by the tenant.

9. The landlord preferred a suit before the Trial Court seeking eviction of the tenant on the following grounds :-

- [a] The tenant is causing nuisance and annoyance by using the terrace.
- [b] The tenant is in arrears of rent for more than 6 months.
- [c] The tenant is unauthorizedly using the terrace which is not rented out to him.

10. By the impugned judgment dated 28/10/1988, the tenant was held guilty of causing nuisance to the landlord by using the terrace. Rest of the issues were answered in the negative and the landlord was held entitled to a vacant possession of the room on the second floor. The tenant was therefore ordered to be evicted.

11. The landlord did not approach the Appellate Authority. It was the tenant who preferred his proceedings before the Appellate Authority challenging the judgment of the Trial Court. As such, the conclusions of the Trial Court holding that the tenant was not a defaulter, he is willing to pay the arrears of rent and is also willing to pay the permitted increase in the rent, have attained finality.

12. The Appellate Authority, by the impugned judgment dated 23/06/1996, sustained the judgment of the Trial Court and concluded that the tenant deserved to be evicted u/s 13(1)(c) of the 1947 Act for having caused nuisance and annoyance. This petition is therefore restricted to the extent of this issue alone.

13. Mr.Sangit, learned Advocate has focused his attention on sub-clause 'C' and has tried to canvass that the nuisance and annoyance has to be caused to the adjoining or neighbouring occupiers and may

not necessarily include a landlord.

14. Section 13(1)(c) reads as under :-

“13. When landlord may recover possession

(1) Notwithstanding anything contained in this Act

(c) that the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers, or has been convicted of using the premises or allowing the premises to be used [for immoral or illegal purposes ; or that the tenant has in respect of the premises been convicted of an offence of contravention of any provision of clause (a) of sub-section (1) of section 394 or of section 394-A of the Bombay Municipal Corporation Act ; or]

15. The Black's Law Dictionary defines 'annoyance' as 'nuisance'.

'Nuisance' has been defined as 'a condition, activity or situation that interferes with the use or enjoyment of property or which either injures the physical condition of adjacent land or interferes with its use or with the enjoyment of any property'.

16. In the Amarchand Harakchand judgment (supra), this Court has considered 'annoyance' and 'nuisance' in the light of the facts that emerged from the case. Paragraph Nos.2 to 5 are relevant and which read as under :-

"2. What is apparently a finding of fact is challenged in this petition. It is, therefore, necessary for me to narrate briefly what exactly was alleged and what exactly has been held proved by the courts below. The case for annoyance and nuisance was based upon the following three allegations :---

i) That the petitioner was keeping along with the other tenants bicycles in the passage, thus causing obstruction to the other tenants;

ii) That the petitioner and/or the other tenants have kept drums also causing obstruction to the other tenants; and

iii) That the petitioner and the other tenants have been throwing rubbish in a tank (known in Marathi as "Houd").

3. In support of their case the respondents examined Kiran, who is respondent No. 2 before me, and one tenant who was staying on the first floor of the building. He is Bhikoba Dhamanskar. Both the Courts below have come to the conclusion that the tenants keep bicycles in the passage, that they also take water from the drums which are kept near the sink and that they also throw rubbish in the tank. The question to which the two Courts below had to address themselves was whether by these acts the petitioner has caused nuisance or annoyance in the legal sense. What constitutes nuisance has not been defined either in the Bombay Rent Act or in any other Act. In Walter v. Salfe, Sir Lancelot Knight Bruce, V.C., has attempted a definition which may be found workable in the following terms :

"...both on principle and authority the important point next for decision may properly be thus put : Ought this inconvenience to

be considered in fact more than fanciful, more than one of delicacy or fastidiousness as an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living but according to plain and sober and simple notions among the English people ?"

(Quoted by Andhyarujina in his Law of Rent Control at page 657) As has also been pointed out by Justice Beaman in [Bai Bhicaiji v. Perojshaw Jivanji Kerawalla](#), XVII Bom.L.R. 1040, a legal nuisance is rather an evasive, shifting and intangible thing hard to be pinned down by a verbal definition. It must be always be conditioned by time, place and circumstances. It has been further pointed out by Justice Beaman that in estimating a nuisance complained of, the Court must have regard to the station in life of the plaintiff, and to the locality and the nature of the nuisance complained of. In the absence of statutory provisions, no general considerations of mere policy, or abstract public rights, can be allowed to prevail against what the law recognises and always has recognised as the legal rights of the individual. Again, there are many degrees of nuisances, those which (1) endanger life; (2) endanger health; and (3) diminish the comforts of the plaintiff.

4. Despite the fact that the two Courts below have given what apparently is a finding of fact, I am constrained to say that this finding is not one of nuisance properly understood in the legal sense. It may be stated at this stage that the house in which the suit premises are situated consists of two parties. On the rear

side the respondents reside while on the front side the petitioner and the other tenants stay. The passage in which obstruction is said to have been caused is not the one which is being used by the respondents or the landlords. In support of their case, as I have already mentioned above, the respondents examined one witness only and he is Bhikoba Dhamanskar whose entire evidence in the examination-in-chief can be reproduced :

"I know the parties in the suit. I am a tenant in part of the building. The cycles seen in the photographs belong to the tenant of the ground floor. Defendant's cycle is in the photograph. The tank in the photo is used to throw the dirt. The occupant of the room the defendant. The drums seen in photo No. 2 are owned by tenant including the defendant. The cycles in photo 2 belong to the defendant, and other tenants. I am troubled because of the defendant and other tenants. I am troubled because it is difficult to use the passage. He abuses the owners and make application against them."

I am unable to see how even if every word of what this witness has stated is accepted it can amount to nuisance in law or in fact. The premises are situated in Pune and judicial notice of the fact can be taken that a common mode of transport in Pune city is the bicycle. What has been mentioned by this tenant is that because of the keeping of the bicycles he finds it difficult to use the passage and he is troubled. In my opinion, this tenant is obliging the landlords by deposing to his extra-sensitiveness and the alleged difficulty experienced by him due to the keeping of the bicycles in the passage.

5. In the cross-examination he has admitted that all the bicycles are kept on the ground floor for the last 20 to 25 years. There is also evidence to show that there are only three bicycles. Similarly Khan, examined on behalf of the respondents, has mentioned that there are only three tenants who have bicycles and all the three from the beginning which means for the last 20 or 25 year as mentioned by Dhamanskar. The courts below have totally failed to apply their minds to the question as to whether suddenly in the year 1972 keeping of the bicycles, which was going on for the last 20 to 25 years, became a nuisance in a city like Pune where, as I have already mentioned, a common mode of transport is the bicycle. Moreover mere difficulty or inconvenience in using the passage experienced by one tenant cannot be held to be nuisance and/or annoyance within the meaning of section 13(1)(c) of the Bombay Rent Act.”

17. In the Kashinath Shankar case (supra), this Court has specifically dealt with nuisance in relation to a property and has observed in paragraph No.6 as under :-

“6. The nuisance for which an action would lie under Section 13(1)(c) is incapable of any legal definition. Nuisance ordinarily means that which annoys or hurts or that which is offensive. It includes any act, omission or conduct which causes or is likely to cause inconvenience, hurt, damage or which may Interfere with the enjoyment of the life or property. Anything done which unwarrantably affects the rights of others, endangers life or

health, gives offence to the senses, violates the law of decency or obstructs the comfortable and reasonable use of property amounts to nuisance. The question whether a particular act, omission or thing is nuisance or annoyance actionable in law depends on surrounding circumstances. The alleged act or omission, the mode of committing it and the consequences flowing therefrom, amount to nuisance or not at all times would be the question dependent on facts and circumstances of the case. However, one thing is certain that in order to attract the ground of eviction under Section 13(1)(c) invariably it needs to be satisfied that the alleged nuisance is of gross and unusual character, frequent and persistent and that it would not be possible for the affected person or persons to lead normal life and it is such that one cannot ordinarily expect in household. Initiating legal process by filing suits or defending the litigation by a party cannot amount to a nuisance or annoyance, a ground for eviction contemplated under Section 13(1)(c). It is always open to a party to assert and vindicate his right in the competent Court though he may succeed or fail in such litigation. A party who pursues his remedy through legal process or defend himself by opposing the litigation initiated against him, cannot by any stretch of imagination be blamed to be guilty of an act which may be covered by expression "nuisance or annoyance" within the meaning of Section 13(1)(c). The Courts below thus, committed serious error of law in relying upon the civil litigation between the parties and a criminal case initiated against the respondent at the instance of the petitioner as an act of nuisance under Section 13(1)(c) of the Bombay Rent Act. Moreover, it would

be seen that issue before the trial Court in relation to the ground for eviction under Section 13(1)(c) was to the effect. "Do the plaintiffs prove that the defendant is guilty of causing nuisance to the adjoining occupiers of the suit premises?" The issue was not framed by the trial Court to the effect whether by filing various suits and making some applications in the suit filed by the landlords, the tenant was guilty of nuisance or annoyance. In the light of the controversy which was crystallized in the form of the issue, the Courts below were only called upon to decide whether the defendant was guilty of causing nuisance to the adjoining occupiers of the suit premises and it was not open to the Courts below to examine the ground of nuisance on the basis of various litigations between the parties which was not subject-matter of issue. Thus, the approach of the Courts below which was erroneous, while considering the issue relating to the ground of nuisance vitiates their findings on that issue. Besides it would be hazardous to guess that if the Courts below had not considered the litigation between the parties as an act of nuisance caused by the tenant. What would have been its finding in respect of the alleged conduct of the petitioner towards his neighbours as alleged by the two witnesses viz. Bhagwan Vithal Deshpande and Eknath Bapuji Kulkarni. Moreover, the evidence led by the plaintiffs does not prove that the defendant was guilty of causing nuisance to his neighbouring occupiers. The finding recorded by two Courts below in this connection is totally unsustainable. It would be seen that heavy reliance has been placed by the plaintiffs-landlords on Exhibit 45, the letter said to have been received from five neighbours which sets out

the conduct of the tenant with his neighbouring occupiers. In the letter Exhibit 45, the tenant has been alleged of looking on women folk in adjoining neighbour houses with bad intention; making abusive remarks while passing, trespass and causing obstruction in the construction of plots purchased by others. The said letter is signed by five persons. Out of these five persons, four have not entered the witness box and only Bhagwan Vithal Deshpande has been examined as P.W. 2. In his deposition, he does not utter a word about tenant's looking on women folk in their houses with bad intention, making abusive remarks about their parents, forcibly trespassing and causing obstruction in the construction of their plots. This witness only has vaguely deposed that the tenant was giving troubles to them in all respects. The tenant would contract persons who visited them; he would chase and abuse them. The tenant would quarrel with them and lifted this witness and fell, him. He has not given details of any of the incidence. He has not named any person who visited him and was contacted by the tenant. He has not given details of quarrels and the incident when this witness was allegedly lifted, in his cross-examination, he admitted that he was not in a position to give dates of incidents. I am afraid such evidence cannot prove the ground for eviction based on nuisance and annoyance to neighbours under Section 13(1)(c). The deposition of another witness Eknath Bapuji Kulkarni is no better. His deposition is as vague as that of Bhagwan Vithal Deshpande. He has deposed that the conduct of the tenant was suspicious and mischievous. The tenant used to contact the persons who used to visit them. The tenant used to abuse,

quarrel and fell them. He, however, admitted that he has not filed any complaint. In the cross-examination, he admitted that the defendant quarrelled with him only two times during the period of more than two decades. Such evidence is no evidence in the eye of law for proving nuisance under Section 13(1)(c) since the evidence must be able to satisfy frequent, persistent, gross and unusual act or omission of nuisance. The nuisance or annoyance to the adjoining or neighbouring occupiers which is contemplated under Section 13(1)(c) must be of serious nature, intensity and frequency. The evidence which has been led by the plaintiff miserably fails to satisfy the said test and, therefore, the Courts below seriously erred in holding that the plaintiffs have been able to prove that defendant was guilty of causing nuisance to the adjoining occupiers of the suit premises.”

18. The meaning of ‘nuisance’ or ‘annoyance’ has been also considered by the Gujarat High Court in the P.D.Trivedi case (supra) in paragraph Nos.9 and 16, which read as under :-

“9. What amounts to nuisance or annoyance has been considered in three cases decided by this Court. In Gaurishanker v. Bhikhalal 1977 (XVIII) GLR 805 while dealing with the ambit of Section 13(1)(c) of the Act, it was observed that following points must exist to hold the action of the tenant as causing annoyance or nuisance:

(1) It must be of a gross character.

(2) It must be of an unusual character.

(3) It must be frequent and persistent.

(4) It must be such that one cannot ordinarily expect in a household.

(5) It must be such that it would not be possible for the neighbours to lead a normal life which one can hope to live in a busy town or city.

Thus, in this case the emphasis on one of the factors was that such conduct of the tenant must be frequent and persistent meaning thereby single and isolated act of the tenant would not amount to nuisance or annoyance within the meaning of Section 13(1)(c) of the Act.

16. For determining whether the act and conduct of the tenant amounts to nuisance or annoyance to the landlord or landlady the test should be whether a reasonable man in the circumstances of the case would feel annoyed or irritated from the conduct of the tenant. It is not fanciful desire of the" landlord or the landlady which is to be taken into consideration. A reasonable lady who herself initiated Civil and Criminal litigation cannot complain that by pursuing such litigation she has been annoyed because the tenant committed trespass. Every person has right to defend his case. Case may be false or true. Ultimately, if the Court finds that the stand of the tenant was incorrect or false this may also not amount to an act of the tenant causing nuisance or annoyance to the landlady. Hyper-sensitivity has no place in determining annoyance or irritation to the landlord or to the landlady. The only thing is whether by such act and conduct of the tenant reasonable man could be

seriously and really annoyed. In every litigation some annoyance is bound to be caused because of the lengthy litigation and time taken in finalising the litigation but this by itself is not a ground to my mind for passing decree for eviction of the tenant.”

19. In the instant case, the landlord has deposed in his testimony that the terrace, which is adjacent to the room let out to the tenant, has been unauthorizedly occupied by the tenant. This would not *per se* amount to causing nuisance. It has been deposed before the Trial Court that the tenant has placed flowerpots and has kept a cot on the said terrace. It is admitted that the landlord is residing on the ground floor and the first floor is occupied by the another tenant Mr.Soni. Mr.Soni has not been examined in the suit. One witness namely Shambhu Maruti Mali has been examined by the landlord. He has stated in his deposition that he resides in a house opposite to the building of the landlord. Instances of nuisance have not been narrated. The tenant has taken a forthright defence that the terrace was also allotted to him and he has been using the same for about 20 to 25 years, from 1970 onwards.

20. In the above backdrop, the evidence before the Trial Court was that the terrace was being used by the tenant for his personal

purposes. Specific instances of nuisance caused were not brought on record by the plaintiffs who used to reside on the ground floor.

21. In so far as sub-clause 'c' u/s 13(1) is concerned, the phraseology used in the said clause indicates that the nuisance or annoyance has to be caused to the adjoining or neighbouring occupiers. Shambhu Maruti as a witness, residing in the neighbourhood, can therefore be considered to be a relevant witness. However, he has not brought forth any instances as per the submissions of Mr.Sangit, to indicate that as a neighbouring occupier, nuisance and annoyance was caused by the tenant.

22. Taking into account the words 'adjoining or neighbouring occupiers', I am of the view that this would include the landlord as he amounts to being an adjoining or neighbouring occupier. The landlord can, therefore, invoke Section 13(1)(c) even to the extent of the act and conduct of the tenant visa-vis a landlord. However, in this case, no such instances have been pointed as being acts causing annoyance and nuisance to the landlord considering the principles laid down by this Court in paragraph No.6 of the Kashinath Shankar judgment (supra) and paragraph No.9 of the P.D.Trivedi judgment (supra).

23. The Hon'ble Apex Court in the matter of Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], has held that if the impugned order amounts to being perverse or erroneous and is likely to cause gross injustice to a litigant, the same can be interfered with in the writ or supervisory jurisdiction of this Court.

24. The trial Court as well as the Appeal Court in this matter have concluded that the conduct of the tenant amounts to nuisance and annoyance to the landlord. Such conclusions are based on the ground that the tenant had placed flowerpots and a cot on the terrace. This according to the Courts below, amounted to causing nuisance and annoyance, which conclusions cannot be sustained.

25. Another ground appreciated by the Courts below is that the tenant used to dry his clothes on a drying line on the terrace. No such evidence has been brought on record that by drying his clothes on the drying line, the tenant was causing annoyance and nuisance to the landlord. These conclusions of the Trial Court as well as the Appeal Court cannot be sustained in the light of the principles laid down by this Court in Amarchand Harakchand case (supra) and

Kashinath Shankar case (supra) and the conclusions of the Gujarat High Court in P.D.Trivedi case (supra).

26. Consequentially, this petition is allowed in terms of prayer clause 'A'. The impugned judgments dated 28/10/1988 and 20/06/1996 are caused and set aside to the extent of the challenge posed by the tenant. RCS No.530/1985 is, therefore, dismissed.

27. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)