

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1028 OF 1996

1. Shri Madhusudan Rangnath Mandavgane (Deceased)
Through his Legal Representatives:-
 - 1-a Shri Raghanvendra Madhusudan Mandavgane
Through his Legal Representatives:-
 - 1-a-1 Smt. Lata Raghanvendra Mandavgane
Age: 73 years
 - 1-a-2 Shrinivas Raghanvendra Mandavgane
Age: 52 years
Both Residing at 924, kapadpeth,
Laxminarayan Mandir, Nashik.
 - 1-a-3 Anand Raghanvendra Mandavgane
Age: 50 years
Residing at 203 rahul park, warje, pune
 - 1-a-4 Sau Tanuja (Geeta) Prashant Joshi
Age: 44 years
Residing at A-5, Vitthal Park,
Sawantwadi, Ashok Sthambh,
Nashik-1.
2. Shri Vyankatesh Rangnath Mandavgane (Deleted)
3. Shri Gopal Krishnaji Mandavgane (Deceased)
Through his Legal Heirs and Representatives:-
 - 3-a Kundan Gopal Mandavgane
Age: 58 years
Residing at 924 kapadpeth,

laxminarayan mandir, Nashik.

3-b Jayashri (Madhvi) Mukund Aatre,
Age: 52 years
R/a-Puranik Wada, Sayi Apartments,
Sardar Chowk, Panchati,
Nashik-3.

3-c Ajit Gopal Mandavgane,
Age: 50 years,
R/a-Behind Shankaracharya Math,
near Ramsetu Bridge, Joshi Wada,
Panchavati, Nashik-3.

4. Shri Shyam Krishnaji Mandavgane
Shri Laxminarayan Mandir,
Kapad Peth, Nashik.

...Petitioners

Versus

Shri Subhash Vishnu Jagtap
Occ. Tailoring, c/o. 924, Kapad Peth
Nashik.

...Respondent

Mr. P.N. Joshi for the Petitioners.
None for the Respondent.

CORAM: G.S. KULKARNI, J.
DATED: 17th July, 2017

JUDGEMENT:-

1. By this petition under Article 227 of the constitution the petitioners/landlords are before this Court being unsuccessful in their eviction suit against the respondent-tenant as confirmed by the appellate Court.

2. In brief the facts are: The suit premises is a shop admeasuring 7 x 9½ sq ft. situated on the ground floor of a building standing on the land bearing Survey No. 1364, Kapath Peth, Nashik.

3. The petitioners instituted Regular Civil Suit No. 570 of 1983 against the respondent seeking a decree of eviction and possession on the ground of bonafide requirement, non-user and nuisance falling under Section 13 (1) (g) (k) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

4. The respondent-tenant contested the suit by filing a written statement. The parties led their evidence before the trial Judge. The learned trial Judge dismissed the suit by the judgement and order dated 31/08/1987 repelling the contentions as urged on behalf of the petitioners on the said three grounds as set up by the petitioners to seek eviction of the respondent.

5. Being dissatisfied with the judgement and order passed by the learned trial Judge, the petitioners approached the appellate Court of the learned Additional District Judge, Nashik in an appeal. The learned appellate Judge by the impugned judgement and

order dated 18/10/1995, confirmed the findings of the trial Judge on the issue of non-user and nuisance. However, on the issue of bonafide requirement, the learned appellate Judge accepted the case of the petitioners that the suit premises were required by the petitioners reasonably and bonafide for the purpose of setting up a medicine shop. However in so observing, the learned appellate Judge held that the comparative hardship was greater to the respondent and thus refused to grant a decree of eviction in favour of the petitioners and dismissed the petitioners appeal.

6. Mr. Joshi, learned counsel for the petitioners has drawn my attention to the observations of the Courts below on all the grounds as urged on behalf of the petitioners and as considered by the Courts below. The grievance of the petitioners is however basically on the plea of bonafide requirement as urged on behalf of the petitioners and on the observations as made by the learned appellate Judge on the issue of comparative hardship. On behalf of the petitioner it is contended that, the case of the petitioners that his grandson who had a pharmacy qualification was in need of the premises, to start a medicine shop was accepted by the learned appellate Judge as a bonafide requirement. It is submitted that,

there was no material for the respondent-tenant to contest this position as held by the appellate Court. It is submitted that, however the observations as made by the learned appellate Judge in Paragraph 8 of the impugned judgement as regards comparative hardship, cannot be accepted being completely contrary to the well settled position in law. It is submitted that, in deciding the issue of comparative hardship, the plea of the tenant was required to be tested by examining as to what efforts the tenant had undertaken to find out alternate premises. On behalf of the petitioners a reference is made to the written statement as filed on behalf of the defendant-respondent to state that there are no averments to show that any effort was taken by the respondent to locate any alternative premises. Further a reference is made to the evidence of Smt. Aruna Subhash Jagtap (wife of defendant no.1) as led on behalf of the respondent, which according to the petitioners is completely silent on this issue. On behalf of the petitioners it is submitted that the bald assertion of the respondent that no suitable premises were available as made in Paragraph 8 of the written statement was of no consequence as the said assertion was totally unsubstantiated due to lack of any evidence in that regard. Thus such averment if was to tested on evidence could not have

been accepted by the appellate Court. It is submitted that, the unequivocal conclusion which can be drawn from the plain reading of Paragraph 8 of the written statement and the evidence of Smt. Aruna Subhash Jagtap (the respondent's wife) would show that no efforts were taken on behalf of the respondent to locate alternative premises. In support of these submissions Mr. Joshi has placed reliance on the decisions of the learned Single Judge of this Court in the case of *Chotumal Bahiramal Sindho Vs. Baburao Vinayak Mohadkar reported in 2009-(4)-Mh.LJ-131* and in the case of *Gurulingappa Sharnappa Birajdar Vs. Sidramappa Ganpatrao Mulge and Anr reported in 2009-(3)-Mh.LJ-661* to contend that, if the tenant fails to plead and prove the fact that, it was impossible to find another alternate accommodation, then in such a case, the issue of comparative hardship would be required to be answered by the Court in favour of the landlord and against the tenant. It is submitted that, the law as laid down in the above decisions is squarely applicable in the facts of the present case, in as much it was quite clear that in the present case the respondent-tenant had completely failed in his obligation as the law would cast, in not undertaking any effort to secure alternate accommodation as also the respondent did not substantiate on

evidence that it was impossible to get a suitable accommodation in the nearby locality. It is therefore submitted that the petition deserves to succeed on this ground of bonafide requirement.

7. Mr. Joshi, learned counsel for the petitioners has also made submissions on the issue of non-user as urged on behalf of the petitioners in the plaint, which was the other ground on which the petitioners prayed for a decree of possession. This ground was sought to be raised on two counts namely on the basis of certain photographs and electricity bills. The learned trial Judge did not accept the case of the petitioners observing that there was a probability that the photographs were taken when the suit premises/shop was closed. As regards, the electricity bills in question, the Court has come to a conclusion that, the electricity bills which were submitted were not of the period, six months prior to the institution of the suit and thus would not assist the petitioners to seek a decree of eviction. These are findings as recorded by both the Courts based on evidence, on the issue of non-user. On perusal of these findings, I do not find any perversity in the Court disbelieving the case of the petitioners on the ground of non-user.

8. Be that as it may, on the ground of bonafide requirement and the issue of comparative hardship it appears that, there is much substance in the petitioner's case as Mr. Joshi would contend.

9. Having perused the plaint and the specific assertions of the petitioners as made in the plaint on the issue of hardship and the respondents averment as made in the written statement as also the evidence which has come on record, in my opinion, the petitioners would be correct in their contention referring to the above decisions that in the absence of any effort on the part of the respondent to find out an alternate premises, the respondent cannot contend that greater hardship was caused to the respondent. Thus the conclusion on the issue of comparative hardship as recorded by the learned appellate Judge certainly cannot be accepted. This is on the conspectus that, the learned appellate Judge had accepted the contention of the petitioners that, the petitioners were in reasonable and bonafide requirement of the suit premises, to conduct a medicine shop. On behalf of the petitioners my attention is drawn to the evidence which has come on record, that it was not in dispute that the wholesale business was conducted by the family members of the petitioners in rented premises and thus

there was definitely a bonafide need on the part of the petitioners to conduct a retail business as per needs of the petitioners-landlords. Mr. Joshi would be correct to contend that to test the case of a landlord on bonafide requirement it is the landlord's need which would be relevant. The respondent-tenant cannot take a plea in the absence of any material that the said bonafide requirement of the petitioners was not genuine.

10. Mr. Joshi is also at pains to point out the observations of the learned appellate Judge in Para 8 of the impugned judgement on comparative hardship. In my opinion, the petitioners would be correct in their contention that the reasons as set out by the learned appellate Judge namely of the respondent having a family of six members and staying together and that they would require the suit premises to conduct a tailoring shop, would not be sufficient to dispel the petitioners case that the petitioners were in greater hardship requiring the premises. The observations of the learned appellate Judge that reasonable rent was paid at the relevant time by the petitioners for conducting a wholesale shop was also completely irrelevant and perverse on the specific case, as made out by the petitioners. The petitioners would be correct

being critical of the observations of the learned appellate judge that there are other medicine shops existing in the locality. These observations can be said to be perverse being completely alien to the issue at hand which was the bonafide requirement of the petitioners to have the suit premises to conduct a business which need and requirement was accepted by the appellate Court as a bonafide requirement.

11. Having considered the decisions as relied upon by Mr. Joshi learned counsel for the petitioners, as noted above, which take into consideration the well settled principles of law as led down by the Apex Court, the contention as urged on behalf of the petitioners that the respondent-tenant had not taken any efforts to secure alternate premises, nor had the respondent come with a case before the Court that the respondent was not in a position to acquire such alternate premises to conduct a business of tailoring shop need to be accepted. Further the assertion of the respondent as made in Paragraph 8 of the written statement that no suitable premises are available as averred in the written statement was a bald assertion being completely unsubstantiated by any evidence in that regard.

12. In the circumstances, the petition deserves to succeed, resultantly the following order:

ORDER

(i) This writ petition is partly allowed. Petitioners are entitled for a decree of eviction on the ground of bonafide requirement and hardship in Regular Civil Suit No. 570 of 1983.

(ii) The respondent is directed to hand over vacant possession of the suit premises to the petitioners within a period of 10 weeks from the day copy of this judgement is made available. No costs.

(G.S. Kulkarni, J.)