

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4752 OF 1998

Shri. Om Prakash Suri
(Since Deceased Through Legal Heirs)
Smt. S.O.Suri Alias Smt. S.S. Gharati,

...Petitioner

Versus

M/s. Chemiequip Ltd.

...Respondent

Mr.Vinod N.Tayade for the Petitioner.

None present for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 23rd JUNE 2017

ORAL JUDGMENT:

1. Heard Mr.Vinod Tayade for the petitioner. The respondent, though served, has put no appearance through some authorized representative or advocate.

2. The challenge in this petition is to the impugned judgment and order dated 18th February 1998 made by the IInd Additional District Judge, Kalyan (Appeal Court), reversing judgment and order dated 30th April 1994 made by Civil Judge (J.D.) Ulhasnagar (Trial Court) ordering eviction of the respondent from Flat No.24, Radheshyam Co-operative Housing Society Ltd.,

O.T. Section, Ulhasnagar-421 003 (Suit premises).

3. The petitioner is the legal representative of the deceased landlord through Shri.Omprakash Suri. The landlord had instituted a suit for eviction of the respondent-tenant from the suit premises, inter-alia on the following grounds :-

(a) Default in payment of rents and Municipal Taxes;

(b) Non-user of the suit premises without reasonable cause;

(c) Bonafide requirement as contemplated by Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Rent Control Act).

4. The learned Trial Judge, vide judgment and order dated 30th April 1994 ordered eviction of the respondent-tenant on the ground as contemplated by Section 13(1)(g) of the Rent Control Act.

5. The respondent-tenant thereupon instituted Civil Appeal No.296 of 1998 before the Appeal Court. The Appeal Court,

vide impugned judgment and order dated 18th February 1998 allowed the appeal and set aside the eviction order made by the Trial Court. Hence, the present petition by the petitioner-landlord.

6. Mr.Tayade the learned counsel for the petitioner submits that the impugned judgment and order made by the Appeal Court warrants interference, because, the Appeal Court, has failed to appreciate scope and import of the provisions contained in Section 13(1)(g) of the Rent Control Act in their proper perspective. In such matter, the landlord is the best judge of his requirement and it is not for the tenant to dictate any term to the landlord, in this regard. He submits that there is ample evidence on record to the effect that the premises occupied by the landlord were illegal and unauthorized premises facing threats of eviction/demolition from the Government and other Statutory Authorities. He submits that the landlord's wife, expired during the pendency of the eviction proceedings before the Trial Court and the eviction petition was amended. By way of amendment it was pleaded that the landlord's brother from Haridwar along with his family members joined the landlord to stay at Mumbai, since, the landlord is required to take care of his aged mother and his young daughter, consequent upon the demise of his wife. Mr.Tayade further submits that the tenant in the present case,

is a company and for long time there was non-user of the suit premises. In any case, the tenant used the premises intermittently for the purposes of providing accommodation to some of his employees. Mr.Tayade submits that there was positive evidence to the effect that other premises are available in the locality and tenant, being a company, would have no difficulty in acquiring alternate premises. Mr.Tayade submits that the Trial Court, upon detailed analysis of the evidence on record had quite correctly ordered eviction. However, Mr.Tayade submits that the Appeal Court, exceeded his jurisdiction in reversing the order of Trial Court, without appreciating either the evidence on record or the legal position, in the proper prospective. Mr.Tayade submits that as against the positive evidence lead by and on behalf of the landlord, the evidence lead by the representative of the tenant was very ambivalent and totally insufficient to rebut the onus, which stood shifted upon the tenant. Mr.Tayade, accordingly submits that the impugned judgment and order dated 18th February 1998 made by the Appeal Court warrants interference.

7. As noted earlier, the respondent though served, is neither present through its representative nor represented by any advocate in this proceedings. Mr.Tayade, the learned counsel for

the petitioner submits that the respondent is no longer interested in the suit premises and only some security guard sometimes is seen in the suit premises. At this stage, however, it is not possible to take cognizance of this submission made by Mr.Tayade. Instead, it is necessary to determine whether the Appeal Courts impugned judgment and order dated 18th February 1998 warrants interference in the exercise of the Writ jurisdiction.

8. Section 13(1)(g) of the Rent Control Act provides that the landlord shall recover the possession of the suit premises, if the Court is satisfied that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held.

9. Section 13(2) of the Rent Control Act further provides that no decree for eviction shall be passed on the ground specified clause (g) of Section (1) of Section 13, if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. The Court if satisfied therefore that no hardship would be caused to the landlord by

passing a decree in respect of the part of the premises, the Court shall pass a decree in respect of such part only.

10. In support of the plea for an eviction decree on the ground as contemplated by Section 13(1)(g) of the Rent Control Act, the landlord had basically urged the following :-

- a) That in the present premises only the landlord was staying along with his family members; the premises were constructed on Government property and therefore, were illegal and unauthorized construction. There was threat of eviction/demolition and on account of such insecurity the landlord, bonafide required the suit premises, belonging to him for his own occupation along with his family members.
- b) Consequent upon the demise of his wife during the pendency of the eviction proceedings, the landlord's owner's brother from Haridwar, a rickshaw driver had shifted in the present premises, along with his family members. Such shifting was necessary because care had to be provided to the landlord's aged mother and young daughter. All these resulted in requirement for additional secured premises, which, the suit premises

were in position to provide.

11. The landlord, in support of the aforesaid ground examined himself. In his deposition, the landlord, clearly stated that the current premises occupied by him were illegal and unauthorized constructions on Government lands in Ulhasnagar. He has also deposed that there were threats of eviction and demolition. He also deposed about the demise of his wife and the factum that his aged mother (75 years old) and his young daughter (14 years old) resides with him. He also deposed that since his old mother was unable to take care of the household work and look after his daughter, he was constrained to invite his younger brother from Haridwar to reside with him along with his family members. He deposed that his younger brother along with his wife, three daughters and one son moved into the current premises and the current premises were totally insufficient for the purposes of the residence of all such family members.

12. Landlord has also deposed that the current premises are not at all suitable for his residence. Apart from the insecurity arising out of the treats of eviction and demolition, the landlord has deposed that the current premises have two small rooms and

kitchen. Besides, the house, is situated on the low level of the road and water flows in the room in the rainy session. This renders the residence extremely difficult. In contrast, landlord has deposed that the suit premises are on the first floor and will be suitable for the occupation of landlord and the family members. The landlord, has deposed to the hardships and inconvenience suffered by him and his family members at the current premises.

13. The landlord, also deposed about the intermittent use of the suit premises by some of the employees of the respondent-tenant. Landlord also deposed that for almost four to five years the suit premises was locked and unused. The landlord has also deposed that the respondent tenant has obtained two flats in Ambernath and he is in a position to acquire other flat, in case respondent requires such flat for its use. Landlord has also deposed that the work of construction of new buildings is going on at Ulhasnagar and Ambernath on a large scale and if the respondent-tenant is genuinely in need of accommodation, the same can be easily acquired by the respondent-tenant.

14. In his cross-examination, the landlord, has deposed that around five to six years earlier, the Government had issued notice to

him regarding unauthorized construction of the house. However, he admitted that the Municipal Council has not issued any such notice. The landlord expressed his inability to produce such notice in the Court. The landlord has denied that the current premises are sufficient for his occupation along with his family. Landlord has also deposed that he is not going to examine any other relative or brother or his brothers wife etc as witness on his behalf. Landlord has also admitted that he has factory manufacturing Mechanical Spare parts, he is Income Tax payer and has a motor car. In his cross-examination the landlord has also deposed about the particulars concerning the family members of his brother who is stated, to have come to reside with him in the current premises. Landlord has categorically deposed that his mother, his daughter, his brother, brothers wife and four children have come to reside with him in the current premises and that, the premises were totally insufficient for their residence.

15. One Motilal Radhanjomal Adwani also came to be examined as a witness on behalf of the landlord. However, evidence of this witness is not relevant to determine whether the ground as contemplated by the Section 13(1)(g) of the Rent Control Act is made out. Similarly, Mr.S.V.Chanchalani, Tax Inspector of the

Ulhasnagar Municipal Council came to be examined on behalf of the landlord. Again, deposition of his witness, is not very relevant in a context of the ground contemplated by the Section 13(1)(g) of the Rent Control Act.

16. Shri.Mulchandani came to be examined on behalf of the respondent-tenant. He stated that he has seen the current premises where the landlord resides about four to five years prior to his deposition and that too, only once. He stated that he has seen the house only from outside but not from inside. He has stated that he is not aware of the number of family members residing along with the landlord in his current premises. He has stated that he is not aware as to whether the current premises have been constructed on Government property and whether, such construction is illegal or not. He has disclaimed knowledge about the construction material employed for construction of the current premises. He has candidly admitted that he has made no inquiries and therefore, he has no knowledge as to whether the deposition of the landlord is correct or not.

17. Mr.Mulchandani, the witness for the respondent-tenant has admitted that respondent-tenant, apart from the suit premises,

had another two room flat at Ambernath and has stated that the respondent company employees around 325 persons, out of which, about 180 are workman and 95 are office employees and the balance are servants. This witness has admitted that in Ambernath-Ulhasnagar there are new constructions being undertaken and there are plenty of real estate agents or brokers in the said area. This witness admitted that he had made no inquiries as regards the possibility of obtaining alternate accommodation. This witness has deposed about details of respondent-tenants factory, the market position of his shares and its financial position. He has deposed that one Dr.Deodar who his employee of the respondent-tenant is presently occupying the suit premises. Finally, he has deposed that respondent company would suffer hardship, in case, is ordered to be evicted from the suit premises.

18. As noted earlier, Trial Court, based upon the evidence on record, accepted the case of the landlord on the ground as contemplated by section 13(1)(g) of the Rent Control Act has been made out. Further, the Trial Court also ruled that the hardship which is being faced, by the landlord is much greater than the hardship which the respondent-tenant may have to face by eviction from the suit premises. The Appeal Court, has however, reversed

the Trial Court order primarily on the following grounds :-

- (i) That the landlord did not examine his brother and any other family members as a witness.
- (ii) That the ground current premises occupied by the landlord were unauthorized premises is not a sufficient ground and in any case, since, no notices from the Government or Municipal Authorities were produced on record, there was no evidence in support of such ground;
- (iii) That there is no sufficient evidence to hold that the landlord brother and his family members moved in current premises.

19. Upon examination of the impugned judgment and order, as also the material on record, the criticism leveled by Mr.Vinod Tayade with regard to the impugned judgment and order made by the Appeal Court will have to be accepted. The Appeal Court, has no doubt, referred to the legal position that in such matters the landlord is best judge of his own requirement. However, the Appeal Court, it appears, has ignored this legal position in its application to the material on record. The positive and categorical evidence on record with regard to the size of the landlord's family,

particularly, after the demise of his wife, has virtually being ignored by the Appeal Court. The Appeal Court has not even adverted to the circumstance that the current premises occupied by the landlord hardly comprise of two rooms and that the current premises were at a level lower than the road. The landlord has deposed that in the monsoon, the water enters in the current premises rendering it difficult for the landlord and his family members to reside there. This deposition was not even challenged. The Appeal Court, has not even recorded any finding that the requirement of the landlord was malafide or not bonafide in the facts and circumstances of the present case. The non-examination of landlords brother or other family members, was certainly not sufficient, in the facts and circumstances of the present case, to draw any adverse inference against the landlord. Landlord has himself deposed that the current premises were on Government land. Further, even notice had been issued by the Government styling the premises as unauthorized or illegal. In these circumstances if the landlord and his family members felt insecure to reside in such premises and felt the need of recovering their own suit premises, it cannot be said that such facts were insufficient to establish bonafide requirement.

20. Again, on the aspect of comparative hardship, the

evidence on the part of the landlord has virtually gone unchallenged. The respondent, from the deposition of his witness, appears to be a large company which has employed more than 300 employees. The witness admitted that it has yet another premises at Ambernath. The witness also admitted that in Ambernath and Ulhasnagar area, there are several constructions coming up and there are large number of agents and brokers. All these material is more than sufficient to establish that the hardship faced by the landlord is far greater than hardship which is the respondent-tenant would face, in case eviction was ordered as contemplated by the Section 13(i)(g) of the Rent Control Act.

21. In this case, it is clear that there was more than sufficient positive evidence put forth by the landlord on record. In contrast, the witness for the respondent was totally vague and ambivalent. On most occasions, this witness, candidly admitted that he was unaware of the true and correct facts or that he was not in a position to comment upon the deposition of the landlord. The evidence of the landlord, in the minimum, was more than sufficient for the onus to shift upon the tenant. The deposition of the witness on behalf of the tenant, however, was not of such nature as to rebut or discharge such onus. The Appeal Court, has erred both, on

principle as well as on facts. This is really not a case of re-appreciation of the evidence but this is case of relevant and material evidence not even being looked into by the Appeal Court. The Appeal Court has itself not followed the legal principles and therefore, the impugned judgment and order made by the Appeal Court warrants interference.

22. Accordingly, impugned judgment and order dated 18th February 1998 made by the Appeal Court is set aside. The Judgment and order dated 30th April 1994 made by the Trial Court is restored. In the facts and circumstances of the present case, there shall be no order as to costs.

23. Rule is made absolute to the aforesaid extent without any order as to costs.

(M. S. SONAK, J.)