

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 760 OF 2018

SMT NATHIBAI PREMCHAND JAIN (DARLESHA)
AND OTHERS
VERSUS
SHRI SANJAY BALKRISHNA KHANKARI AND OTHERS

Advocate for Respondent Nos. 1 to 3 : Shri M.S. Kulkarni
h/f. Shri R.G. Joshi.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 22nd January, 2018

PER COURT :

1. The petitioners are aggrieved by the order dated 17/11/2017, passed by the Trial Court, by which, application Exhibit 89, filed by the original plaintiffs seeking amendment to the eviction Regular Civil Suit No. 166/2008, has been allowed.

2. Learned counsel for the petitioners submits that respondent Nos. 1 to 3/ original plaintiffs are contesting respondents in this petition. Rest of the respondents are formal parties and respondent Nos. 4 to 6 have been deleted from the array of defendants.

3. I have considered the strenuous submissions of the learned advocates for the respective sides.

4. There is no dispute that the plaintiffs had amended the said suit on four occasions before application Exhibit 89, was filed for seeking the fifth amendment. The earlier amendments were for the purpose of bringing the LR.s. of some deceased litigants on record and one amendment was with regard to an error that had crept into the plaint.

5. Exhibit 89 has been filed for seeking leave to delete original plaintiff No. 4-A, 4-B, 5 and 6, that leaves only three plaintiffs on record and for disclosing various properties that are owned by the said plaintiffs.

6. Shri Kulkarni, learned advocate for the petitioners, who are aggrieved defendants, has placed reliance upon the judgment of this Court in the matter of **Tarachand Hassaram Shamdasani Versus Durgashankar G. Shroff & others [2004 (Supp.) B.C.R. 333]**, to contend that non discloser of properties by a landlord, seeking eviction on the basis of bona fide requirement, is fatal to the claim of the landlord seeking such an eviction. He has specifically pointed out paragraph Nos. 8 and 9 in the **Tarachand's case (Supra)**, which read as under :-

“8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the

fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that inspite of those acquisition and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be bona fide and reasonable.

9. I have no hesitation in taking the view that in the fact situation of the present case the plaintiff has failed to plead and also depose in his evidence (examination-in-chief) about the ownership of other premises capable of being used for the requirement pressed into service in the subject suit. Besides, he has failed to disclose and explain that even the other premises were not sufficient to satisfy the requirement/pressed into service in the suit against the tenant. Only when the landlord pleads and proves all these material facts that the Court would be able to adjudicate fully, completely and effectually as to whether the requirement pressed into service by the landlord in the suit so filed is bona fide and reasonable. As mentioned earlier, it is well settled that the landlord is not only required to establish his need to be bona fide but also to be reasonable. If the landlord fails to plead or establish either of this ingredient then the ground under section 13(1)(g) of the Act for eviction is unavailable to the landlord. Inherent in this test is that, if the landlord has failed to disclose relevant materials in the pleading and in his evidence (examination-in-chief), de

jure, the landlord has not approached the Court with clean hands. In such a case, it will be the duty of the Court to non-suit the landlord with regard to this ground. It will be useful to place reliance on the enunciation of the Apex Court in the case of S.P. Chengalvaraya Naidus case (supra). The Apex Court has observed that duty is cast upon the plaintiff to disclose all the facts, it is the duty of the plaintiff to come to Court with true case and prove it by true evidence. The Apex Court has further observed that deliberate deception with the desire of securing something by taking unfair advantage of another, it is a deception in order to gain by another's loss, it is a cheating intended to get an advantage. Further, in paragraph 6 it has observed that, non-disclosure of all the material and relevant facts at the trial tantamount to playing fraud on the Court. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. Withholding of any vital document in this case information, in order to gain advantage on the other side then he would be guilty of fraud on the Court as well as on the opposite party. Such a person can be summarily thrown out at any stage of the litigation. If this principle is to be applied to the facts of the present case, I have no manner of doubt that the respondent-landlord will have to be non-suited on this ground. Because, it is a case of non-disclosure of material facts and information, therefore, one of approaching the Court with unclean hands. And as observed by the Apex Court tantamount to playing fraud on the Court as well as the opposite side.”

7. Based on the above conclusion of this Court, he pointed out

from the plaint that the plaintiffs have specifically stated that the eviction suit has been instituted on account of bona fide requirement of the property. Considering the growing business of the plaintiffs they need space to install their modern machinery and if the defendants/tenants are not evicted, their business would be jeopardized. He submits that, since a specific stand was taken by the plaintiffs that they have no other property, leave to amend granted by the impugned order, notwithstanding that the Trial of the suit has not commenced, is unsustainable in the light of the proviso to Rule 17 under Order VI of C.P.C.

8. He, further, submits that since he has exposed the other properties owned by the plaintiffs, he has a legal right in the suit, considering the law laid down in the Tarachand's case (Supra), by which, he can seek the dismissal of the suit as this Court has concluded that the plaintiffs can be non-suited only on this count.

9. Learned counsel for the plaintiffs has canvassed on the basis of the map placed at page 45 that the suit property at issue comprises of rooms Nos. A to E. Each room was let out. For each room, there were various eviction proceedings pending in various Courts. Though, the issues were cast on 07/01/2009, the Trial had not commenced.

10. It is canvassed on behalf of the plaintiffs that due to the subsequent events that had occurred in the pending litigation, it required the plaintiffs to disclose the said results in the various suits and since a right occurred to the plaintiff on account of the disposal of the pending suits, the plaintiffs felt that this was the right time to disclose their rights in the said properties pursuant to the decisions in the pending suits.

11. I have gone through the application Exhibit No. 89, filed by the plaintiffs setting out in details the stages in the various pending suits and their outcome. It is also averred that all these properties were owned by this plaintiffs, barring the few that were purchased in 2014. Details of these properties were not mentioned in the plaint since they were all subjected to the litigation.

12. It is stated that the issue of redemption of mortgage was involved in Special Civil Suit No. 03/2008. Similar was the cause in Special Civil Suit No. 140/2007. Special Civil Suit No. 140/2007 and Special Civil Suit No. 73/2008 were compromised between the parties and Special Civil Suit No. 03/2008, was decided on 21/04/2017. All these developments have occurred recently.

13. It is obvious from the law laid down by this Court in

Tarachand's case (Supra), that all properties owned by the plaintiff seeking eviction of a tenant from a particular property on the ground of bona fide requirement, have to be disclosed. In the instant case, though these properties were not disclosed by the plaintiffs in the plaint, it appears that wisdom has dawned upon before the Trial in the suit could commence and the plaintiffs are now desirous of disclosing all their properties including some of the properties that have been acquired in the Pune and Pimpri Chinchwad Municipal limits, subsequently.

14. The grievance of the defendants is that after they had exposed the plaintiffs in a suit filed in the year 2008 and since they got a legal right on account of the non disclosure, permitting the plaintiffs to disclose the said properties by an amendment would be against the proviso to Rule 17 under Order VI of the C.P.C. which mandates that due diligence must be established by the party seeking amendment.

15. The contention of the petitioners ,in the light of the judgment of this Court in Tarachand's case (Supra), is quite sustainable. However, it cannot be ignored that though, belatedly the plaintiffs are disclosing their entire properties, if, they are not permitted to disclose the said properties, they are bound to be non suited in view

of the law laid down in Tarachand's case (Supra). Though belatedly, the plaintiffs have come forward to disclose their entire properties. This cannot be to the disadvantage of the petitioners/defendants as they have filed their additional written statement to make out the case that the plaintiffs do not have a bona fide requirement with regard to the suit properties. If hardship are caused to the petitioners, the plaintiffs can be subjected to heavy costs, since they have sought to disclose the properties after nine years of the institution of the suits.

16. Considering the above, this petition is partly allowed only to the extent of costs, by modifying the impugned order dated 17/11/2017. While sustaining the order allowing the amendment, the order of costs is modified and the plaintiff shall pay an amount of Rs. 10,000/- to each of the four petitioners, which shall be deposited before the Trial Court on/or before 15/02/2018, failing which they shall not be permitted to amend their plaint and the order granting amendment shall, therefore, stand set aside with effect from 16/02/2018. After costs are deposited, each of the petitioners shall withdraw the said costs in equal proportions without conditions.

17. In so far as the conduct of the plaintiffs is concerned, the

said issue is kept open for the Trial Court to be considered while deciding R.C.S. No. 166/2008.

(RAVINDRA V. GHUGE, J.)

S.P.C.