

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.96 OF 2018
WITH
CIVIL APPLICATION NO.188 OF 2018

Jivraj Bachubhai Mistry ... Applicant
Vs.
Punsar Govind Charan ... Respondent

Mr. Rakesh Agrawal for Applicant.
Mr. N. P. Bhavsar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 22, 2018

P.C. :

Heard Mr. Agrawal, learned Counsel for the applicant and Mr. Bhavsar, learned Counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 06.05.2014 passed by the learned Judge, Court Room No.32 of the Court of Small Causes at Mumbai, Bandra Branch in R.A.E.Suit No.285 of 2008 as also the judgment and decree dated 12.12.2017 passed by the Appellate Bench of the Small Causes Court in (A1) Appeal No.1 of 2015. By these orders, the Courts below decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff', and directed the defendant to handover vacant and peaceful possession of residential premises on the first floor of the Govind Estate admeasuring about 100 sq.ft. (10'x10') situate at Kathiyawad Chowk, Rani Sati Marg, Malad (East), Mumbai 400 097 (for short 'suit premises') within 3 months from the date of the order.

3. In support of this Application, Mr. Agrawal submitted that the Suit is instituted by Punsur Govind Charan claiming to be the landlord of the suit premises. The Suit is instituted in his individual capacity. In paragraph 4, plaintiff alleged that he requires the suit premises for their bonafide purpose. The plaintiff's family is a joint family consisting of-

- a. plaintiff's mother Smt. Messarybai Govind Charan, aged about 84 years;
- b. plaintiff himself;
- c. plaintiff's wife;
- d. elder married son Govind having 4 children (3 daughters and 1 son);
- e. 3 unmarried daughters;
- f. 1 unmarried son, whose marriage is fixed;
- g. plaintiff's younger brother Amar is residing alongwith his wife and 3 children (2 sons and 1 daughter, out of which one son is physically handicapped by birth, another son is college going and one mentally retired daughter who is school going.);
- h. plaintiff's another younger brother Arjun is residing with his wife and 3 children (2 daughters and 1 son).

4. Plaintiff and his joint family members are having area for residential purpose admeasuring about 450 sq.ft. The family of the plaintiff is growing. The premises in his possession are insufficient to accommodate these persons.

5. Mr. Agrawal submitted that in paragraph 6 of the plaint, plaintiff alleged that defendant is not in use of the suit premises. The defendant's family consists of his wife and 3 children. Defendant's elder married son stays in the suit premises at night for a period of 15 to 20 days in a month. In paragraphs 7, the plaintiff alleged that defendant acquired the

suitable house accommodation in Ashirwad Co-op. Hsg. Soc. Ltd., Block No.404, 4th floor, Dhanjiwadi, Rani Sati Marg, Malad (East), Mumbai-400 097. In paragraph 8, plaintiff alleged that defendant acquired another house accommodation at Abdul Kadir Chawl, Khot Kuwa Road, Malad (East), Mumbai 400 097.

6. Mr. Agrawal submitted that in paragraph 6a of the written statement, defendant specifically disputed that the plaintiff and his brothers constitute a joint family. Plaintiff and his two brother are residing separately having their separate kitchen and separate business altogether. Only the mother of the plaintiff resides along with the plaintiff and the children of his other brothers are residing on the first floor of the suit property. In paragraph 6b, defendant specifically contended that the plaintiff, his mother, his two brothers and their respective children are in possession of the premises admeasuring 740 sq.ft. and thereabout and not 450 sq.ft. In paragraph 6c, defendant specifically asserted that plaintiff acquired possession of room No.2 admeasuring 108 sq.ft. carpet area from the monthly tenant Bhanubhai Rawal and room No.4 admeasuring 100 sq.ft. carpet area from his sister Laxmi Charan, during the pendency of the Suit. Thus, plaintiff is not in possession of the area admeasuring 450 sq.ft.

7. Mr. Agrawal submitted that in paragraph 6e, defendant specifically asserted that premises in Abdul Kadir Chawl is a commercial premises. The front portion is used for running a shop and the rear portion is used as a godown for storing the goods and the said fact is within the knowledge of the plaintiff and his mother and brothers. He submitted that in paragraph 6f of the written statement, defendant contended that block No.404 admeasuring 245 sq.ft. carpet area was acquired by him and his wife jointly in the year 1998. The said

accommodation was acquired as the family of the defendant is consisting of 3 grown up sons. The suit premises which admeasures 100 sq.ft. carpet area is insufficient having regard to the members in his family as also their privacy. In paragraph 6g of the written statement, defendant specifically asserted that save and except block No.404, he has no other premises.

8. Mr. Agrawal submitted that though the ground of non-user as contemplated by Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short 'Rent Act') was invoked, the Courts below declined to pass decree on that ground. He submitted that basically, the Courts below committed serious error in decreeing the Suit. The plaintiff failed to establish that his requirement is both, reasonable and bonafide. The plaintiff's claim that his family is a joint family consisting of himself and two brothers is not substantiated by adducing evidence. The Courts below however proceeded on the premise that plaintiff's family is a joint family consisting of plaintiff and his brothers and their children. After taking into account their alleged need, the Courts below have decreed the Suit.

9. Mr. Agrawal submitted that initially, notification under Section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act') was issued on 18.03.1978, which was published in the Government Gazette on 06.04.1978. However, the Tribunal constituted under the Slum Act set aside that notification by order dated 22.07.2004 in Appeal No.2 of 2004. The Suit was instituted in the year 2008. However, during the pendency of the appeal, once again, area where the suit premises is situate is declared as a slum area on 19.05.2016. He submitted that the Appellate Court, while dismissing the Appeal, should have directed

plaintiff to execute the decree only upon obtaining permission as contemplated by Section 22(1)(b) of the Slum Act. He, therefore, submitted that the Application requires consideration.

10. Civil Application No.188 of 2018 is taken out for stay of the impugned orders.

11. On the other hand, Mr. Bhavsar supported the impugned orders. He submitted that in paragraph 23, the Appellate Court considered admission of D.W.1 during the course of cross-examination that rear portion of the commercial shop in Abdul Kadir Chawl is used for residence. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the Suit under Section 16(1) (g) of the Rent Act and therefore, no case is made out for interfering with the impugned orders.

12. In so far as the declaration of area, where the suit premises is situate, as slum area on 19.05.2016 during the pendency of the Appeal is concerned, Mr. Bhavsar has tendered copy of the order dated 19.10.2018 passed by the Deputy Collector (Encroachment & Removal) and Competent Authority giving permission to the plaintiff for executing the eviction decree. The same is taken on record and marked 'A' for identification.

13. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. With the assistance of the learned Counsel for the parties, I have also perused the plaint, written statement as also the evidence adduced by the parties and the impugned orders. As noted earlier, plaintiff specifically came with the case that his family is a joint family consisting of his mother Smt. Messarybai Govind Charan, plaintiff himself, his wife, his elder married son Govind having 4

children (3 daughters and 1 son), 3 unmarried daughters, 1 unmarried son, whose marriage is fixed, his younger brother Amar who is residing alongwith his wife and 3 children (2 sons and 1 daughter, out of which one son is physically handicapped by birth, another son is college going and one mentally retired daughter who is school going) and his another younger brother Arjun who is residing with his wife and 3 children (2 daughters and 1 son). The said fact was reiterated by the plaintiff during the course of evidence. Even if for the time being, it is accepted that they are having separate kitchen and are carrying out separate business, the requirement pleaded by the plaintiff cannot be doubted.

14. It is settled principle of law that when plaintiff comes with the case of reasonable and bona fide requirement, the Court has to proceed on the presumption that need pleaded by the plaintiff is reasonable and bona fide and it is for the defendant to bring on record material to show that need pleaded by the plaintiff is neither reasonable nor bona fide.

15. I am supported in taking this view by the decision of this Court in the case of **Manhar Auto Stores Vs. Kalpesh Hemantbhai Shah, 2010 (3) Mh. L.J 331**. In paragraph 12, this Court referred to the decision of **State of Maharashtra vs. Super Max International (P) Ltd, (2009) 9 SCC 772** to highlight that the landlord's needs, in landlord tenant dispute, has undergone change and different trend is now discernible. Paragraph 12 reads thus;

“12. There are umpteen number of judgments of this and the Apex Court where it has been held that when the landlord indicates his need of the premises it need not be looked at with suspicion, and he need not be advised by the tenant as to how he should satisfy his need by going to other premises. The learned counsel for the respondent submitted that the view of superior Courts in respect of the landlord's needs, in landlord-tenant disputes, has undergone change and a different trend is now discernible. For this purpose, he sought to place reliance on the observations of the Apex Court in a matter arising out of

the provisions of the Bombay Rent Act and the Maharashtra Rent Control Act, in *State of Maharashtra vs. Super Max International (P) Ltd.*, reported at (2009) 9 SCC 772. It may be useful to reproduce, for ready reference, observations of the Supreme Court in paragraphs 64 to 72 of the judgment, as under:

“It needs to be stated here that the decisions relied upon by Mr. Lalit are undoubtedly binding precedents for the respective issues decided in those cases but it is not possible to stretch those decisions in support of the point canvassed by him. We must also state here that on the basis of the aforementioned decisions Mr. Lalit was able to build up a persuasive argument. But in the larger perspective and with the change in times we find the submissions quite unacceptable.

65. Here it is important to bear in mind that all the decisions relied upon by Mr. Lalit, from *Damadilal* to *H. Shiva Rao* were rendered between 1876 to 1986 during the period when to put it mildly, the Court used to be overly protective of the tenant and for good reasons too because that is the apparent thrust of the Rent Act.

66. The Rent Act was the socio-legal response to certain historical developments, namely, the acute shortage of housing in the aftermath of the World War, the great influx of refugees in a number of States of the Union following the partition of the country and the massive migration inside the country from rural areas to the urban centres as a result of rapid urbanization. All these developments that took place almost at the same time skewed the law of supply and demand totally in favour of the landlord. The need of the hour, therefore, was to protect the tenant, who would have otherwise been left completely at the mercy of the landlord. The legislature intervened and brought in the Rent Act, severely restricting the grounds for enhancement of rent and for eviction of the tenant from the rented premises, thus regulating the relationship between the landlord and the tenant beyond the general law under the Transfer of Property Act, 1882. In this regard the Court responded in equal, if not greater measures. But after about three quarters of a century and three generations later when things are no longer the same and the urban centres are faced with newer problems, some of those having their origin in the Rent Act itself, there is the need to take a relook on the Court's attitude towards the relationship between the landlord and the tenant and to provide for a more level ground in the judicial arena.

67. The way this Court has been looking at the relationship between the landlord and the tenant in the past and the shift in the Court's approach in recent times have been examined in some detail in the decision in *Satyawati Sharma vs. Union of India*. In that decision one of us (Shighvi, J.) speaking for the Court referred to a number of earlier decisions of the Court and (in para 12 of the judgment) observed as follows: (SCC pp. 304-05)

“12. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the Courts heavily leaned in favour of an interpretation which would benefit the tenant – *Mohinder Kumar vs. State of haryana*, *Prabhakaran Nair Vs. State of T.N.D.C* *Bhatia vs. Union of India* and *C.N Rudramurthy vs Barkathulla Khan*. In these and other cases, the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against exploitation by landlords who seek to take advantage of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments.”

68. The learned Judge then referred to some later decisions and (in para 14 at SCC p. 306 of the judgment) quoted a passage from the decision in *Joginder Pal vs. Naval Kishore Behal*, to the following effect: (*Joginder Pal* case, SCC p. 404, para 9).

“14. ... 9.... The Courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as to take care of the interest of the landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble”. (emphasis in original)

69. Commenting upon the Full Bench of the Delhi High Court that had upheld the constitutional validity of section 14 (1) (e) of the Delhi Rent Control Act and that came

under challenge in *Satyawati Sharma, Shighvi, J.* (in para 29 of the judgment) observed as follows: (SCC p. 318)

“29. ... It is significant to note that the Full Bench did not, at all, advert to the question whether the reason/cause which supplied rationale to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite seesaw change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential or commercial purposes.

70. The decision in *Satyawati Sharma* then referred to the doctrine of temporal reasonableness and in para 32 observed as follows: (SCC p. 320)

“32. It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.”

71. We reaffirm the views expressed in *Satyawati Sharma* and emphasise the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say the Court should lean in favour of the landlord but merely that there is no longer any room for assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq. ft. in a building situate at Fort, Mumbai on a rental of Rs. 5236.58, plus water charges at the rate of Rs. 515.35 per month more than amply highlights the point.)

72. With the perspective thus adjusted, all the submissions made by Mr. Lalit on behalf of the appellant have a simple answer. The interim order of the High Court asking the appellant to deposit Rs. 5,40,000/- from the date of the decree as condition for stay of execution of the decree of ejectment has to be seen as one single package. The appellant may or may not accept the order as a whole.

But, it is not open to it to accept the order insofar as it stays the execution of the decree and to question the condition attached to it”.

16. In the instant case, the Courts below, after appreciating the evidence on record, have concurrently decreed the Suit and accepted the case made out by the plaintiff. The Courts below also noted that plaintiff obtained possession of room No.2 and 4 admeasuring 108 and 100 sq.ft. respectively.

17. In so far as the trial Court is concerned, the learned trial Judge has considered the ground of reasonable and bonafide requirement [Section 16(1)(g)] from paragraphs 19 to 26. In so far as the question of comparative hardship is concerned, the same is considered in paragraphs 27 to 29. After considering the material on record, the learned trial Judge held that plaintiff has established that his requirement is both, reasonable and bonafide and that greater hardship will be caused to the plaintiff in case the eviction decree is not passed. In so far as the Appellate Court is concerned, grounds of reasonable and bonafide requirement as also comparative hardship are considered from paragraphs 14 to 31. After re-appreciating the entire evidence on record, the Appellate Court concurred with the finding recorded by the learned trial Judge. After appreciating the evidence on record, the Courts below held that the defendant has acquired self-content flat No.404 admeasuring 245 sq.ft. carpet area in Aashirwad Co-operative Housing Society. D.W.1 admitted during the course of cross-examination that the rear portion of commercial shop in Abdul Kadir Chawl is used for residence and on this ground also, no hardship will be caused to the defendant in the event eviction decree is passed.

18. In the case of ***Phiroze Bamanji Desai Vs. Chandrakant N. Patel***, (1974) 1 SCC 661, the Apex Court observed that the word “requires” in

Section 13(1)(g) means that there must be an element of need before a landlord can be said to “require” premises for his own use and occupation. It is not enough that the landlord should merely desire to use and occupy the premises. What is necessary is that he should need them for his own use and occupation. The finding that the landlord reasonably and bona fide required the suit premises for his own use and occupation is clearly one of fact. In paragraph 12, the Division Bench of this Court in *Nathulal Gangabaks Khandelwal Vs. Nandubai*, AIR 1984 Bombay 340 observed that the question whether the landlord so requires or needs the premises and whether such need or requirement is bona fide or not would be a question of fact which of course the landlord would have to establish for success in the case. Thus, the Courts below, after appreciating the evidence on record, have concurrently held that the need pleaded by the plaintiff is both, reasonable and bonafide, and as such, finding of fact is arrived at after appreciating the evidence on record. In view thereof, I do not find that the Courts below committed any error in that regard.

19. In so far as the issue of obtaining permission under Section 22 of the Slum Act is concerned, during the pendency of the appeal, area where the suit premises is situated was declared as a slum area on 19.05.2016. It is no doubt true that the Appellate Court, while dismissing the appeal, did not direct the plaintiff to obtain permission before executing the decree. It is material to note that plaintiff had made application for permission of the Competent Authority and accordingly, on 19.10.2018, the Competent Authority has also granted permission. Mr. Agrawal states that defendant will challenge this order, if so advised.

20. In view thereof, I do not find that any case is made out for interfering with the impugned orders. The defendant was not in a

position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendant was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the evidence on record, another view is possible, that itself is no ground for invocation of powers under Section 115 of the C.P.C. Hence, Application fails and the same is dismissed. In view of the dismissal of C.R.A., Civil Application No.188 of 2018 does not survive and the same is disposed of accordingly.

21. At this stage, Mr. Agrawal submits that defendant intends to challenge order dated 19.10.2018 passed by the Competent Authority granting permission to the plaintiff to execute the eviction decree. He also orally applies for stay of eviction decree for a period of 12 weeks from today and assures that defendant and all adult family members residing with him in the suit premises will file usual undertaking within two weeks from today, with advance copy to the other side, incorporating therein that,

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interest nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interest nor part with possession of the suit premises;
- (d) they will clear arrears of rent / compensation @ Rs.4,000/- per month from December 2017 till 31.10.2018 within two weeks from today;
- (e) in case they are unable to obtain suitable orders from the higher Court within twelve weeks from today, they will hand over vacant and peaceful possession of the suit premises to the plaintiff;

22. Mr. Agrawal assures that within two weeks from today, defendant will deposit the rent / compensation from November, 2018 till January,

2019 (covering 12 weeks period from today) in the trial Court, under intimation in writing to the other side.

23. Mr. Bhavsar submits that plaintiff may be permitted to withdraw the amount already deposited and amount to be deposited hereafter, unconditionally.

24. In view thereof, notwithstanding dismissal of C.R.A., eviction decree will not be executed for a period 12 weeks from today subject to applicant filing undertaking in the aforesaid terms within two weeks from today. It is made clear that in case the undertaking is not filed in the aforesaid terms and/or in case defendant commits breach of any of the clauses of the undertaking, ad-interim order shall stand vacated without further reference to the Court. In case, defendant is unable to obtain suitable orders from higher Court within a period of twelve weeks and does not hand over possession of the suit premises to the plaintiff, the plaintiff will be at liberty to execute the decree in accordance with law.

25. Plaintiff is permitted to withdraw the amount already deposited and to be deposited by the defendant, unconditionally. All parties, including the trial Court to act upon the authenticated copy of this order. Order accordingly.

26. List the Application for 'reporting compliance' on 26.11.2018.

(R. G. KETKAR, J.)