

Tukaram Keshav Davare and Others ...Petitioners
vs.
Babulal Motilal Oswal and Others ...Respondents

CORAM : M. S. SONAK, J.

RESERVED ON : 13th DECEMBER, 2018

PRONOUNCED ON : 20th DECEMBER, 2018

1. Heard learned counsel for the parties.
2. The Petitioners are the successors of the original Plaintiffs and the Respondents are the successors of the original Defendants in Civil Suit No. 589 of 1999. Therefore, they shall be referred to as Plaintiffs and Defendants for sake of convenience.
3. The challenge in this Petition is to the judgment and order dated 21st September, 2005 made by the District Court at Pune (Appeal Court) reversing the judgment and decree dated 29th March, 2003 passed in Civil Suit No. 589 of 1999 made by the Small Causes Court, Pune (trial Court).

4. By judgment and decree dated 29th March, 2003 the trial Court had ordered the eviction of the Defendants from the suit premises on the ground that the Plaintiffs require the suit premises reasonably and *bonafide*. The Appeal Court by impugned judgment and decree dated 21st September, 2005, has however allowed the Appeal instituted by the Defendants and set aside the judgment and decree dated 29th March, 2003 made by the trial Court. Hence, the present Petition by the Plaintiffs /landlords.

5. Mr. Ramiz Shaikh, learned counsel for the Plaintiffs submits that there was overwhelming evidence on record to establish that the Plaintiffs require the suit premises reasonably and *bonafide*. He submits that there was overwhelming material on record to answer the issue of comparative hardship in favour of the Plaintiffs . The trial Court in fact correctly decreed the eviction suit. However, the Appeal Court, by basing on irrelevancies has exceeded the jurisdiction in interfering with the trial Court decree.

6. Mr. Shaikh submits that the Plaintiffs had disclosed the factum of the premises already in their possession and had not only pleaded but established the need for additional premises. He

submits that on the specious plea that the Plaintiffs has allegedly failed to disclose the area of the premises in their possession, the decree made by the trial Court ought not to have been interfered with by the Appeal Court. He submits that the Appeal Court has taken into consideration even the residential premises occupied by the Plaintiffs , in order to deny the Plaintiffs a decree of eviction when, the Plaintiffs had clearly pleaded and proved that the need for the suit premises was to expand their existing commercial activities in the adjoining premises.

7. Mr. Shaikh submits that this is clear case of misreading the pleadings as well as evidence on record and to that extent the finding recorded by the Appeal Court is vitiated by perversity. He submits that the landlords are the best judges of their interest and the Appeal Court was not at all right in reversing the trial Court on the basis of surmises and conjectures coupled with advise to the landlords as to the extent of requirement of premises for commercial purpose. He relied on several judgments in support of his contentions.

8. Mr. Jamdar, learned counsel for the Respondent

submits that there is no error whatsoever in the impugned judgment and decree made by the Appeal Court. He points out that the Plaintiffs in their pleadings nowhere stated about the precise area which was in their possession for purposes of commercial activities. He submits that such suppression of material particulars dis-entitles the Plaintiffs to seek eviction on the ground of reasonable and *bonafide* requirement. He relies on ***Tarachand Hassaram Shamdasani vs. Durgashankar G. Shroff and Ors., 2004 (Supp.) Bom. C.R. 333.***

9. Mr. Jamdar submits that the Appeal Court in the present case has considered the material on record and there is no perversity in the findings recorded by the Appeal Court which is a final Court in so far as facts are concerned. He therefore submits that this is not at all fit case to exercise jurisdiction under Article 227 of the Constitution of India and interfere with the findings of fact recorded by the Appeal Court.

10. The rival contentions now fall for determination.

11. On the aspect of reasonable and *bonafide* requirement, the Plaintiffs had made the following averments in the Plaint.

“As mentioned above the Plaintiffs No. 1 to 4 are real brothers and their family is joint. At present the family members of the four brothers are nearly about 25 person. The Family is still increasing. The Plaintiff No. 1 Tukaram Keshavrao Davare is the eldest brother and head of the joint family. He is doing business in the adjoining premises as a general merchant and commission agent. The Plaintiff No. 2 is very recently retired from his services and he is getting very meagre pension. He has his wife and children. The Plaintiff No. 3 Eknath Keshavrao Davare is in Government service he is working as attendance in National Chemical Laboratory and his pay is also very meagre and he is unable to maintain his family members within the source of his income. The Plaintiff No. 4 Bhanddas Keshavrao Davare is in service in PWD department and working at clerk. He is not in a position to maintain his family members within his means. It is also not possible for the Plaintiff No. 1 to maintain all the family members on the income of his business which he is doing in the adjoining premises. The sons of the Plaintiff No. 1 are grown up and the sons of other brothers of the Plaintiff No. 1 are also grown up. The Plaintiff No. 2 since his retirement has no work and he also wants to do business alongwith the other Plaintiffs in the suit premises. They have no other premises to do independent business and to be helpful in maintaining the joint family of all the Plaintiffs. For all these reasons the Plaintiffs require the premises reasonably and bonafide. On this ground also the Plaintiffs are seeking possession of the suit premises.

As the Defendant No. 1 stopped his business, he does not now require the suit premises and therefore, for the reasons mentioned above has illegally sublet the premises to defendant No. 2. It is therefore submitted that there will be no hardship to the defendant if decree for possession is passed against them. The Plaintiff No.1 on many occasions requested the defendant No. 1 to hand over vacant and peaceful possession of the suit premises. But he put off doing so on one pretext or the other. Lastly, the Plaintiff No. 1 met the Defendant No. 1 and also Defendant No. 2 on or about 15/07/1999 and requested both of them to hand over vacant possession of the premises. But both of them flatly refused to do so.”

12. The Defendants denied the aforesaid averments by submitting that the Plaintiffs are in possession of premises which are twice in size than the suit premises. The Defendants contended that the premises in possession of the Plaintiffs are sufficient for the requirement of the Plaintiffs. The Defendants also contended that apart from the Plaintiff No. 1, the remaining Plaintiffs stay in separate and independent premises. However, since Plaintiff Nos. 2 to 4 are in service, they neither wish to undertake any business nor do they have any means for undertaking any business. Later on it was also added in para 8 of written statement that since the Plaintiffs have not indicated precisely the area of the premises in their possession, the suit for eviction on the ground of *bonafide* requirement is liable to be dismissed.

13. The Plaintiffs examined in all 4 witnesses in respect of their case. Out of this, the evidence of Tukaram Keshavrao Davare (P.W.1) and Eknath Keshavrao Davare (P.W.3) is relevant for the issue of reasonable and *bonafide* requirement and comparative hardships. Based upon such evidence, the trial Court decreed the suit.

14. The Appeal Court has however reversed the trial Court primarily on the ground that the Plaintiffs did not state the precise area of the premises in their possession and the evidence on record indicates that the Plaintiffs have ample space to expand their existing grocery business. The Appeal Court held that there were no clear pleadings that the Plaintiffs' sons also required the suit premise for business purposes. The Appeal Court held that most Plaintiffs were old / retired and had neither means nor capacity to undertake grocery business. The Appeal Court also held that the Defendants have only the suit premises to carry on their business and the alternate premises belong to the Defendant's wife. Mainly on this basis, the Appeal Court reversed the trial Court.

15. According to me, the above reasoning and approach of the Appeal Court is flawed, both on facts as well as in law. The jurisdiction under Article 227 of the Constitution to interfere with the findings of fact is quite limited. However, the Appeal Court has misread the evidence on record and even glossed over completely material evidence in the form of admissions on the part of the Defendants. This renders the findings recorded by the Appeal

Court, perverse. Besides, the Appeal Court has travelled into irrelevancies and the view taken is contrary to rulings of the Apex Court and this Court on the issues of reasonable and *bonafide* requirement.

16. In the pleadings as well as in the evidence, the Plaintiffs had given a sufficient description of the premises in their possession as well as the suit premises. The pleadings, very clearly indicate that the suit premises were a part of the larger premises held by the Plaintiffs. The front portion of the premises held by the Plaintiffs was used for grocery business and the rear portion for residence. The Respondents had themselves pleaded that the portion in occupation of the Plaintiffs was twice in size as compared to the suit premises. In these circumstances, merely because the specific area of the premises held by the Plaintiffs may not have been stated, such alleged omission can hardly be described as any suppression of material particulars so as to attract the ***Tarachand Shamdassani*** (supra) principle.

17. The Appeal Court has noted that the premises in possession of the Plaintiffs admeasure approximately 1270 sq.ft.

The Appeal Court however failed to note that out of this, only the front portion was used for grocery business and the rear portion for residence. The Appeal Court by combining both the portions has held that the Plaintiffs “*have more than ample space*” should they desire to expand their grocery business. Such failure to take note of relevant and vital evidence on record or to make a distinction between business premises and residential premises, clearly sounds in the arena of perversity.

18. Besides, the Appeal Court was not at all justified in making value judgments on the need or the requirement of the Plaintiffs. It is well settled that the landlords are the best judges of their requirement and it is neither for the tenants nor for the Courts to dictate the landlords on such issues. The Apex Court has time and again held that it is for the landlords to decide in what manner they should use their own premises and it is not for the Courts to express any opinions on how the landlords should undertake their businesses.

19. In ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta – (1999) 6 SCC 222*** the Hon'ble Apex Court has held that

jurisdiction under section 115 of CPC can be exercised where the Courts ignoring weight of evidence, proceed on a wrong premise of law or derive such conclusions from the established facts as betray a lack of reason and/or objectivity would render the findings vulnerable. The Apex Court has observed that the judgment leading to a miscarriage of justice is not a judgment according law. In this case itself, the Apex Court has held that what is *bona fide* requirement may not have been defined in the Act. However, the words “*need*” and “*require*” both denote a certain degree of want with a thrust within demanding fulfillment. Bona fide or genuine need and the landlord are two expressions which are interchangeable in practice and carry same meaning. They refer to a state of mind. Requirement must not be a mere desire. The degree of intensity contemplated by “*requires*” is much higher than mere desire. The phrase “*requires bona fide*” is suggestive of legislative intent that a mere desire which is the out come of whim or fancy, is not taken note of by rent control legislations. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family

would entitle him to seek ejection of the tenant. In such a situation, the judge of facts should place himself in the armchair of the landlord and then ask the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is *bona fide*. Once the Court is satisfied of the *bona fides* of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose, the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of *bona fide* need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

20. In **Rameshwar N. Parajapl vs. Sundrabai K. Ghadage - 2013 (2) Mh.L.J. 178** the learned Single Judge of this Court held that it is for the landlord to consider what is his *bona fide* requirement and it is not for the tenant or for the Court to *dictate what* is bona fide requirement of the landlord. The learned Single Judge relied upon the ruling of the Apex Court in **Prativa Devi vs. T.V. Krishnan - 1987 DGLS (Soft) 321**. In which, the Apex Court had made the following observations:

“It is well settled law that the landlord is the best Judge of his residential requirement and has a complete freedom in the matter. It is no concern of the Courts to indicate to the landlord how and in what manner he should live or to prescribe for him a residential standard of their own. The High Court was not justified in giving such a gratuitous advice to her which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property.”

21. In **Mohd. Ayub and anr. vs. Mukesh Chand - (2012) 2 SCC 155** the Apex Court has reiterated that the landlord need

not be a dire necessity. Similarly, the greater affluence of the landlord is also an irrelevant consideration. The Apex Court held that the Court cannot direct the landlord to do particular business in particular area or imagine that he could profitably do a particular business rather than the business she proposes to start. It is for the landlord to decide which business he wants to do and Courts cannot advise in such matter. In this case, the Apex Court also noted that there was nothing on record show that during pendency of the litigation, the tenant made any genuine attempts to find out any alternate accommodation. The Apex Court in fact set aside the perverse findings of the Courts below on the aspect of the comparative hardship.

22. In ***Achutanana Baidya vs. Prafullya Kumar Gayen and ors. - (1997) 5 SCC 76*** the Apex Court has held that the High Court in exercise of its jurisdiction under Article 226/227 of the Constitution of India can interfere with the findings of fact arrived at by the subordinate court if not based on any evidence or based on manifest misreading of the evidence. On the issue of the Plaintiffs having ample space, the finding recorded by the Appeal Court is based on no evidence or in any case based upon manifest

misreading of the evidence. Clearly, therefore, such perverse findings warrant interference under Article 227 of the Constitution of India.

23. In the present case, there was ample evidence in respect of the ground of reasonable and *bonafide* requirement. P.W. 1 and P.W. 2 have deposed to these ground consistent with the pleadings in the Plaint. The reasoning that there was no pleading that the sons require the suit premises, is vitiated by perversity. There are clear pleadings that the sons of Plaintiffs are grown up. There are pleadings that the Plaintiff No. 2 since retirement has no work and wants to do the business. There are pleadings that the Plaintiffs have a joint family and desire to undertake business through the suit premises. There was no serious challenge to these pleadings either in the written statement or in the course of evidence at the stage of cross examination.

24. Besides, it is necessary to note that by the time such suits are decided, there are bound to be changes in the position of the family. The original Plaintiffs get old or even expire. Merely because there may be no clear pleadings that the suit premises

were also required also for the business of their children, the Appeal Court could not have denied the Plaintiffs the decree of eviction on the ground of reasonable and *bonafide* requirement. In the present case, there were sufficient pleadings to indicate that the children were also intended to be involved in the business. The Appeal Court, it appears, has completely glossed over such pleadings.

25. On the aspect of comparative hardships, the Appeal Court has failed to even take note of vital and relevant evidence regards the access to alternate premises enjoyed by the Defendants. The Defendants (D.W.1) in his evidence, in fact admitted to having business premises at Bhawani Peth itself but claimed that the premises “*were in the name of his wife*”. There is absolutely no evidence that the wife was in fact undertaking any independent business through the said alternate premises. Several questions were posed in the course of cross examination and the answers were only evasive. D.W. 1 was called upon the produce the documents of accounts which he failed to produce. The trial Court had quite correctly drawn an adverse inference. The Appeal Court however ignored all this material only because D.W. 1 stated that

the alternate premises were in the name of his wife.

26. The Appeal Court completely failed to take cognizance of yet another alternate business premises available to the Defendants at Nana Peth where the Defendants were undertaking business of wholesale dealings in sugar, salt and vanaspati under name and style of “K.M. & Co.”. In evidence it is brought on record that initials “K” and “M” imply Ketan and Mukesh which are the names of two sons of the Defendants. There is ample evidence on record that the Defendants had access to premises at Bhawani Peth as well as Nana Peth through which the Defendants were in fact undertaking business. The Appeal Court has completely glossed over all this material when it came to deciding the issue of comparative hardships.

27. No doubt, the jurisdiction of this Court to interfere with finding of fact is quite limited. However, this is a case where relevant and vital evidence has been completely glossed by the Appeal Court. This is a case where the Appeal Court has recorded finding which are totally contrary to the weight of material on record. This is a case where the Appeal Court has applied incorrect

principles and purported to sit in judgment over the requirement of the Plaintiffs -landlords on a subjective basis. The reasoning of the Appeal Court is contrary to the law laid down by the Supreme Court and this Court in matters of eviction on the ground of reasonable and *bonafide* requirement. This is also a case where the Appeal Court failed to come in close quarters with the reasoning of the trial Court before reversing the decree made by the trial Court. These are sufficient grounds to exercise the jurisdiction under Article 227 of the Constitution of India and interfere with the impugned order.

28. Accordingly, for the aforesaid reasons, the impugned judgment and decree dated 21st September, 2005 made by the Appeal Court is set aside and the judgment and decree dated 29th March, 2003 made by the trial Court is hereby restored. The Defendants are directed to handover the vacant and peaceful possession of the suit premises to Plaintiffs within three months from today.

29. The Petition is made absolute in terms of the prayer clauses (a) and (b). There shall be no order as to cost.

(M. S. SONAK, J.)