

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 8167 OF 2004

Shubhada Shashikant Kuvalekar	]	
(since deceased)	]	
1A. Niket Shashikant Kuvalekar & Ors.	]	Petitioners
Vs.		
Indirabai Balbhim Kulkarni	]	
(since deceased)	]	
1A. Manohar Balbhim Kulkarni & Ors.	]	Respondents

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Mr. Rajiv Patil i/b Hitesh Vyas, for Petitioners.
 Mr. S.N. Chandrachud, for respondents No.1A, 1B (iii) & 1B(iv).
 Mr. Nitin P. Deshpande, for Respondents No.1B, 1B(i), 1b(ii).

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CORAM : R.G. KETKAR, J.

DATE : 13TH APRIL, 2018.

JUDGMENT:

Heard Mr. Patil, learned Counsel for the petitioners, Mr. Chandrachud, learned Counsel for respondents No.1A, 1B(ii) and 1B (iv) and Mr. Deshpande, for respondents No.1B, 1B(i) and 1B(ii) at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as “defendants” have challenged the judgment and decree dated 7th July, 2004 passed by the learned 14th Ad-hoc Additional District Judge, Pune in Civil Appeal No.244 of 1996. By that order, the learned District Judge allowed the appeal preferred by the respondents, hereinafter referred to as “plaintiffs” and quashed and set aside the judgment

and decree dated 14th December, 1995 passed by the learned Vth Additional Small Cause Judge Pune in Civil Suit No.871 of 1993. The learned District Judge decreed the suit and directed the petitioners/defendants to hand over vacant and peaceful possession of Block No.3 situate at 1st Floor on Plot No.76/32, Shantishila Society, Erandavane, Chiplunkar Road, Pune 400 004 (for short 'suit premises') within three months from the date of the order.

3. The plaintiffs instituted suit, inter alia, claiming possession on various grounds viz;

- [1] committing breach of terms and conditions of tenancy u/s section 13 (1) (a);
- [2] additions and alterations of permanent nature without permission of the plaintiffs in writing u/s 13 (1) (b);
- [3] unlawful subletting since 1988 u/s 13 (1) (e);
- [4] bona fide and reasonable requirement u/s 13 (1) (g)

of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). The learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiffs preferred appeal before the learned District Judge which is allowed as indicated hereinabove.

4. In support of this Petition, Mr. Patil has taken me through the ground u/s 13 (1) (g) pleaded in paragraph 4 of the plaint. In paragraph 4, the plaintiff pleaded ground u/s (1) (g) in the following terms;

“4)The Plaintiff is an old lady-widow and she has no separate income except that of rent getting from the property. The Plaintiff has three sons and daughter. The Plaintiff requires the premises for her daughter and a son for their own use and occupation. The Plaintiff is in need of the premises for reasonable and bona fide requirements of her family members”.

5. Mr. Patil invited my attention to evidence of P.W.1 Pramod Kulkarni, son of the plaintiff. P.W. 1 admitted that he was residing with his parents during the lifetime of his father. His father died in the year 1988. He deposed that his mother Indirabai is an old lady. She sustained a paralytic attack. She is unable to speak and attend Court proceedings. She had given Power of Attorney dated 22nd September, 1985. He has produced rent note dated 25th April, 1975 at Exhibit 28. Defendant No.1 was residing in the suit premises along with her husband, her two sons and her in-laws. There were six persons in number. Defendant No.2 Shrikrishna is brother of husband of defendant No.1. In paragraph 6, P.W.1 deposed that he is residing with Indirabai in the suit building. She has no independent accommodation for herself. P.W.2 Bharati Dhananjay Dixit is his sister. His mother had made arrangement for maintenance of the property. His sister has no accommodation of her own to reside. She has accommodation of her parents in law. Suit premises are required for Bharati Dixit. He further deposed that his one brother resides at Kasba Peth. He is in possession of two rooms. There are six members in his family. He is short of accommodation. He is a Bank employee. His another brother is residing at Mumbai.

6. Mr. Patil submitted that in cross-examination, P.W. 1 deposed that after the death of father, the suit plot came to the name of his mother and area of that plot is 6500 square feet. The construction available at the plot is ground plus one floor. He denied that still a construction of about 2500 square feet can be made on the suit plot and that at present, there is construction of about 4000 square feet. He is working in Bank of Maharashtra. His wife is working honorary with Rohini Magazine. She is having a business of printing in her name. He also admitted that he has a flat at Renuka Nagari. His other brother M.B. Kulkarni is also an officer in Bank of Maharashtra. He has one son, who is also Bank employee. They are having a flat of their own. His another brother

S.B. Kulkarni is an Executive Engineer in Maharashtra State Electricity Board. He is at Mumbai and is having his own flat. He has one son. He further deposed that his brother-in-law, husband of Bharati is having business at Pune. His brother-in-law is the only son and he has no other siblings.

7. Mr. Patil also invited my attention to evidence of P.W.2 Bharati Dixit. She deposed that after marriage she was residing in a rented accommodation at Shukrawar Peth. They started living in a block admeasuring 650 square feet consisting of 4 rooms. Her father-in-law died in the year 1993. Her family consists of herself, her husband, three children and mother-in-law. She deposed that her family is having separate ration card and her mother-in-law is having separate ration card. She produced photo copies of ration cards at Exhibit 47 and 48. She deposed that her elder daughter Yogini is a student of 1st year Arts. Her second daughter Nandini is student of 10th standard. Her son Mandar is a student of 2nd standard. At present, she is in possession of only two rooms out of the said block. One room is used as kitchen while other one is used for all purposes. In the cross-examination, she admitted that after marriage she was residing at her husband's house without any assistance or help from her parents. She denied that to get two separate gas connections, separate rations cards were obtained and that they never resided separately.

8. Mr. Patil invited my attention to the evidence of D.W. 1 Nishad Shashikant Kuvalekar and in particular paragraph 4. In paragraph 4, D.W. 1 deposed that his parents, elder brother, his wife and their one daughter, he himself and his wife and their one daughter are residing in the suit premises. His brother Nived and his wife are temporarily residing at Bangkok for the purpose of their job. There are three couples in the suit premises. Suit premises is adequate for their family.

9. Mr. Patil submitted that basically the plaintiffs have not established that their requirement is both reasonable as well as bona fide. He submitted that the learned District Judge has recorded a finding that ration cards Exhibit 47 and Exhibit 48 show different addresses. He has taken me through ration cards at Exhibit 47 and Exhibit 48 and submitted that they are of the same addresses. He submitted that the District Judge committed error in holding that P.W. 2 Bharati is residing separately from her mother-in-law on the basis of ration cards at Exhibit 47 and 48. He submitted that basically need of Bharati is neither reasonable nor bona fide. Her family consists of herself, her mother-in-law, her husband and three children in all six persons. Having regard to the area of 650 square feet in their possession, it cannot be said that premises in her possession are inadequate. Mr. Patil further submitted that it has come in evidence of D.W.1 that there are 10 members in the family of the defendant. If the eviction decree is passed, it will cause tremendous hardship to the defendant. He submitted that basically as the plaintiffs have not established reasonable and bona fide requirement, it was not incumbent upon the defendants to show that their need was mala fide or un-reasonable. He, therefore, submitted that impugned order deserves to be set aside, thereby, allowing their Petition and dismissing the suit.

10. On the other hand, Mr. Chandrachud supported the impugned order. He has taken me through the findings recorded by the learned District Judge in paragraphs 16 onwards dealing with ground under section 13 (1) (g) of the Act as also issue of hardship from paragraphs 20 to 26.

11. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. I have already extracted paragraph 4 of the plaint where the plaintiff has pleaded ground u/s 13 (1) (g) of the Act. The plaintiff contended that she is an old lady

and has no separate income except that of rent getting from the property. She has three sons and one daughter. She requires the premises for her daughter and sons for their own use and occupation. The plaintiff is in need of the premises for her family members.

12. P.W. 1 Pramod has deposed that he is residing all along with the plaintiff and after death of his father also, he is residing with the plaintiff. His sister Bharati has no accommodation of her own to reside. The suit premises are required for his sister. He further deposed that his one brother resides at Kasba Peth and he is in possession of two rooms and his family consists of six members. He is short of accommodation. In the cross-examination, it was suggested to him that area of the plot is 6500 square feet and on that plot construction of ground plus first floor is existing. Mr. Patil submitted that a perusal of the evidence of the plaintiff's witness shows that they are well placed in life and they are having sufficient accommodation. A perusal of evidence of P.W.2 Bharati shows that her father-in-law died in the year 1993 and she was residing at her matrimonial home admeasuring 650 square feet in area and consisting four rooms. She deposed that initially they were residing jointly. Due to disturbances, her family started residing separately. Even on the date of evidence, she was residing separately, as also even after the death of her father-in-law. In the cross-examination, she reiterated that there were differences of opinion between her and her mother-in-law. The District Judge has considered this aspect in paragraph 17 of the impugned order. It is no doubt true that in paragraph 17, the learned District Judge recorded that ration cards are having different addresses, I have gone through the original record. The addresses in ration cards at Exhibit 47 and 48 are not different. However, it does not diminish her case of bona fide requirement. During the course of cross-examination of P.W.1 Pramod, suggestion was given that plaintiff can carry out further construction on the suit plot. In paragraph 4 of

evidence of D.W.1, he deposed that suit building is consisting of two floors only i.e ground plus one floor. One floor can be easily constructed on the suit building.

13. A perusal of the evidence adduced by the defendants does not indicate that they have brought on record any material to substantiate that need pleaded by the plaintiff is neither reasonable nor bona fide. It is settled principal 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.

14. 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 upo 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 emphasis 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”.

15. In case of **Sara Rauf and another Vs. Durgashankar Ganeshlal Shroff**, 2007 (4) Mh. L. J 129, the learned Single Judge of this Court observed that for the purpose determining whether the requirement of the landlord of the premises in question is reasonable and bona fide, what is necessary to be considered is not whether the landlord has juridically in possession of other premises, but, whether they were available to him for occupation so that he cannot be said to be in need of the premises in question.

16. In the cross-examination of P.W.1 Pramod, it was suggested to him that the plaintiff can carry out further construction on the plot admeasuring

6500 square feet on which at present ground plus first floor is existing. The learned District Judge has rightly discarded this suggestion.

17. Applying settled principals of law to the facts of the present case and after appreciating the evidence adduced by the defendant, I do not find that the defendant has brought material on record to show that need pleaded by the plaintiff is neither reasonable nor bona fide. In fact, learned District Judge also noted that one of the sons of defendant No.1 is working in Bangkok and prior to his service, he had education in England. This clearly establishes that defendant No.1 was financially sound so as to send her children abroad for education purpose. It has also come on record that husband of defendant No.1 was running a factory. He was Director in that Company. In paragraph 24, the learned District Judge considered evidence of D.W.1 Nishad where he admitted that at present his grand parents, his elder brother, his wife and daughter are residing in the suit premises. In paragraph 25, the District Judge observed that defendant No.1 is financially sound and it is not so difficult for her to get the alternate accommodation in the same locality. The learned District Judge observed that financial position of defendant No.1 is sound. The evidence adduced by D.W.1 that defendant started searching for alternate accommodation was not accepted as no material was produced on record. Thus, after considering the material on record, the learned District Judge in paragraphs 16 to 19 observed that plaintiff's need of the suit premises is both reasonable and bona fide.

18. The question of comparative hardship was considered by the learned District Judge in paragraphs 20 to 26. For the reasons recorded in paragraphs 20 to 26, I do not find that the learned District Judge committed any error in answering point of comparative hardship in favour of the plaintiff. Hence, no case is made out for interfering with the impugned order.

19. In view of aforesaid discussion, it cannot be said that the findings recorded by the District Court while decreeing the suit under Section 13 (1) 13 (1) (g) of the Act are contrary to the material on record. The defendant is not in a position to demonstrate that the findings recorded by the District Court are perverse being based on no evidence or that they are contrary to the evidence on record. The defendant is also not in a position to demonstrate that no reasonable or prudent person would have arrived at the conclusions other than arrived by the District Court. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the powers under Article 227 of the Constitution of India. In the result, the Petition fails and the same is dismissed. Rule is discharged. In the circumstances of the case, no order as to costs.

20. At this stage, Mr. Patil orally prays for continuation of interim order dated 3rd October, 2005 for period of eight weeks from today. He states that the defendant No.1 and all the adult family members residing with her/using the suit premises will file usual undertaking in this Court within two weeks from today, after giving 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 interests nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interests nor part with possession of the suit premises;
- [d] within two weeks from today, applicants will deposit the arrears, if any, in this Court, under intimation in writing to the learned Counsel for the plaintiff.

[e] in case they are unable to obtain suitable orders from the higher Court within four months from today, they will hand over vacant and peaceful possession of the suit premises to the plaintiff;

21. In view thereof, notwithstanding dismissal of the Writ Petition, subject to the defendant filing undertaking in the aforesaid terms within two weeks from today, interim order dated 3rd October, 2005 shall remain in force for a period of eight weeks. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case, defendants commit breach of any of the conditions of the undertaking, the plaintiffs will be at liberty to execute decree. Order accordingly.

22. List the Petition for reporting compliance on 3rd May, 2018.

[R.G. KETKAR, J.]