

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7390 OF 2014

Meena Dhundiraj Sarawate ... Petitioner
Vs.
Vinay Pandurang Mhaske and another ... Respondents

WITH
WRIT PETITION NO.7391 OF 2014

Sitaram Bhalchandra Kirloskar ... Petitioner
Vs.
Vinay Pandurang Mhaske and another ... Respondents

WITH
WRIT PETITION NO.7392 OF 2014

Shobhana Bhalchandra Belsare (decd) thru LRs... Petitioners
Vs.
Vinay Pandurang Mhaske and another ... Respondents

WITH
WRIT PETITION NO.7393 OF 2014

Vivek Manohar Kelkar ... Petitioner
Vs.
Vinay Pandurang Mhaske and another ... Respondents

Mr. Sagar Bhirange for Petitioner in all the Petitions.
Mr. Madhav J. Jamdar for Respondents in all the Petitions.

CORAM : R. G. KETKAR, J.
DATE : JULY 26, 2018

P.C. :

Heard Mr. Bhirange, learned Counsel for petitioner and Mr. Jamdar, learned Counsel for the respondents in all the Petitions at length.

2. Writ Petition No.7390 of 2014 takes exception to the judgment and decree dated 16.04.2014 passed by the learned District Judge-18,

Pune in Civil Appeal No.232 of 2010. By that order, the learned District Judge allowed Civil Appeal No.232 of 2010 and other companion appeals and set aside the judgment and decree dated 16.01.2010 passed by the learned trial Judge in Civil Suit No.319 of 2007 and other companion Suits. The learned District Judge decreed the Suit and other companion Suits and directed the defendants in each Suit to handover vacant and peaceful possession of the premises in their possession, more particularly described in Schedule of the respective Suits, to the respondents, hereinafter referred to as 'plaintiffs', within 3 months from the date of the order, for the purpose of demolition and erection of new building in its place. The plaintiffs / landlords were directed to file undertaking as per Section 16(1)(i) and (6) of the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act') in the Court within one month in the light of the observations made in the judgment. The petitioners have also challenged the findings recorded by the learned District Judge on 25.04.2017. In pursuance of order dated 12.01.2017 passed by this Court, parties were permitted to examine one expert witness, each, and the learned District Judge was directed to render a finding as regards condition of the building and remit the record to this Court.

3. Writ Petition No.7391 of 2014 takes exception to the judgment and decree dated 16.04.2014 passed by the learned District Judge-18, Pune in Civil Appeal No.231 of 2010. By that order, the learned District Judge allowed Civil Appeal No.231 of 2010 and other companion appeals and set aside the judgment and decree dated 16.01.2010 passed by the learned trial Judge in Civil Suit No.320 of 2007 and other companion Suits. The learned District Judge decreed the Suit and other companion Suits and directed the defendants in each Suit to handover vacant and peaceful possession of the premises in their possession, more

particularly described in Schedule of the respective Suits, to the respondents, hereinafter referred to as 'plaintiffs', within 3 months from the date of the order, for the purpose of demolition and erection of new building in its place. The plaintiffs / landlords were directed to file undertaking as per Section 16(1)(i) and (6) of the Maharashtra Rent Act in the Court within one month in the light of the observations made in the judgment. The petitioners have also challenged the findings recorded by the learned District Judge on 25.04.2017.

4. Writ Petition No.7392 of 2014 takes exception to the judgment and decree dated 16.04.2014 passed by the learned District Judge-18, Pune in Civil Appeal No.312 of 2010. By that order, the learned District Judge allowed Civil Appeal No.321 of 2007 and other companion appeals and set aside the judgment and decree dated 16.01.2010 passed by the learned trial Judge in Civil Suit No.321 of 2007 and other companion Suits. The learned District Judge decreed the Suit and other companion Suits and directed the defendants in each Suit to handover vacant and peaceful possession of the premises in their possession, more particularly described in Schedule of the respective Suits, to the respondents, hereinafter referred to as 'plaintiffs', within 3 months from the date of the order, for the purpose of demolition and erection of new building in its place. The plaintiffs / landlords were directed to file undertaking as per Section 16(1)(i) and (6) of the Maharashtra Rent Act in the Court within one month in the light of the observations made in the judgment. The petitioners have also challenged the findings recorded by the learned District Judge on 25.04.2017.

5. Writ Petition No.7393 of 2014 takes exception to the judgment and decree dated 16.04.2014 passed by the learned District Judge-18, Pune in Civil Appeal No.238 of 2010. By that order, the learned District

Judge allowed Civil Appeal No.238 of 2010 and other companion appeals and set aside the judgment and decree dated 16.01.2010 passed by the learned trial Judge in Civil Suit No.317 of 2007 and other companion Suits. The learned District Judge decreed the Suit and other companion Suits and directed the defendants in each Suit to handover vacant and peaceful possession of the premises in their possession, more particularly described in Schedule of the respective Suits, to the respondents, hereinafter referred to as 'plaintiffs', within 3 months from the date of the order, for the purpose of demolition and erection of new building in its place. The plaintiffs / landlords were directed to file undertaking as per Section 16(1)(i) and (6) of the Maharashtra Rent Act in the Court within one month in the light of the observations made in the judgment. The petitioners have also challenged the findings recorded by the learned District Judge on 25.04.2017.

6. As common questions of law and fact arise in these Petitions, the same can conveniently be disposed of by this common order. In order to appreciate controversy between the parties, facts from Writ Petition No.7390 of 2014 are taken into consideration.

7. The suit premises in all these Petitions are situate in City Survey No.425/B admeasuring 223.02 sq.mtrs., Shaniwar Peth, Pune. The premises is divided in two parts. One part consists of two storied building and another consists of three storied building. The suit premises were originally owned by - (i) Purushottam Laxman Lagwankar, (ii) Janardhan Laxman Lagwankar and (iii) Dr. Chandrakant Dattatray Lagwankar, each, having 1/3rd undivided share in the entire property. Plaintiff No.1 is the builder and developer by profession. Initially, plaintiff No.1 had decided to develop the entire suit property. Accordingly, three development agreements were entered into on - (i)

07.07.2004 between legal representatives of Purushottam and plaintiff No.1, (ii) 16.07.2004 between plaintiff No.2- Dr. Chandrakant and plaintiff No.1 and (iii) 11.05.2006 between legal representatives of Janardan and plaintiff No.1. The defendants before this Court are the tenants of Lagwankar family. One of the tenants, Vivek Manohar Kelkar, occupies premises admeasuring 292.94 sq.ft. Premises occupied by another tenant Smt. Meena Dhondiba Surwase and another tenant Sitaram Bhalchandra Kirloskar admeasure 180 sq.ft. each. The other tenant Shobhana Bhalchandra Belsare is occupying the shop premises admeasuring 65 sq.ft. The premises of the other 3 tenants is the residential premises. It appears that in the meeting dated 28.11.2004, proposal was accepted by plaintiff No.1 and in pursuance thereof, the tenants gave consent in notarized form on 05.01.2005 enabling plaintiff No.1 to obtain sanction for demolition and reconstruction of the building on the suit property. In pursuance thereof, plaintiff No.1 obtained sanctioned plan of the building to be constructed on the suit property.

8. It is the case of the plaintiff No.1 that because of the approach of the tenants and their excessive demands, proposal dated 28.11.2004 could not be materialized. He, therefore, purchased the suit property and developed it for his own use and purpose. Accordingly, he purchased 1/3rd share from legal representatives of Purushottam Lagwankar vide registered sale deed dated 27.09.2006 and 1/3rd shares from the legal representatives of Janardhan Lagwankar vide registered sale deed dated 14.09.2006 and thus he became owner of 2/3rd share while plaintiff No.2 is owner of remaining 1/3rd share. The development agreement dated 16.07.2004 executed between plaintiff No.1 and owners still exists. It is the case of the plaintiff No.2 that he requires the suit premises reasonably and bonafide for his own use as well as for dispensary of his son Prasad Lagwankar, who is Doctor by profession.

9. The plaintiffs came with the case that the building where the suit premises are situate is more than 40 to 50 years old. The owners were unable to carry out repairs to the suit property. It is in a dilapidated condition and not fit for residence. Plaintiff No.2 is also a medical practitioner. His son Prasad became Doctor and he is running his dispensary at Anandnagar, Pune. The plaintiffs, therefore, instituted Suit inter alia contending that the suit premises are reasonably and bonafide required to the plaintiffs for immediate purpose of demolition and reconstruction of new building in its place as contemplated by Section 16(1)(i) of the Maharashtra Rent Act. It was contended that they are ready and willing to provide a flat of equivalent area of the tenanted premises in new building to the defendants on tenancy basis. They have requisite funds to carry out construction of the new building. They are also ready to accommodate the defendants on tenancy basis. As the defendants did not hand over possession, the plaintiffs were constrained to issue notice on 06.01.2006 calling upon them to handover vacant possession of the premises in their respective possession. As possession was not handed over, the plaintiffs instituted Suit.

10. Defendants filed written statements. They admitted that the suit building is 40-50 years old but denied that it is in a dilapidated condition. They showed ignorance of purchase of 2/3rd share in the suit property by plaintiff No.1. They denied requirement of plaintiff No.2 and contended that son of plaintiff No.2 is having his big dispensary at Anandnagar, Pune. Thus, the requirement is not bonafide. It was further contended that the proposal in the meeting dated 28.11.2004 was finalized. Not only that but the term at Sr. No.5 in the earlier proposal dated 19.07.2004 was also finalized and accepted in the meeting dated 28.11.2004. It was agreed between the parties that plaintiff No.1 will

give premises in new building on ownership basis. It was further agreed that defendants will pay charges @ Rs.300/- sq.ft. for the premises to be provided on ownership basis in the newly constructed building and for additional area, defendants were required to pay @ Rs.1200/- per square feet and for the mezzanine floor, they are required to pay @Rs.500/- per square feet. Some of the tenants, namely, Vivek Kelkar, Meena Sarwate had paid that amount to the plaintiff No.1 through cheques for purchasing the premises in new building on ownership basis. They have also signed consent terms so as to enable the plaintiff No.1 to get the plan of the proposed building sanctioned from Pune Municipal Corporation. Thus, according to them, there was a concluded contract between the parties for providing premises on ownership basis to the defendants. However, plaintiff No.1 changed his mind with a view to defeating the rights of the defendants and therefore, refused to execute the final agreement as per proposal dated 28.11.2004. Defendants are ready and willing to perform their part as per the agreement. The Suits are filed with a view to harassing the defendants and compelling them to purchase the premises on higher rates.

11. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. After considering the material on record, the learned trial Judge dismissed the Suits on 16.01.2010. The learned trial Judge held that plaintiffs failed to prove that they reasonably and bonafide require the suit premises for immediate purpose of demolition and erection of new building thereon and that plaintiffs have failed to comply with the requirements of Section 16(6) of the Maharashtra Rent Act. Aggrieved by that decision, plaintiffs preferred appeal in the District Court. By order dated 16.04.2014, the learned District Judge allowed the appeals. Aggrieved by that decision, defendants instituted these Writ Petitions in this Court. The Petitions were heard on

12.01.2017. After hearing the parties, the learned Single Judge of this Court (Coram : N. M. Jamdar, J.) was of the opinion that satisfaction regarding the condition of the building by the District Court is necessary in the facts of the case and it cannot be done in a cursory manner. The learned District Judge has dealt with this aspect in only one paragraph. The parties were therefore, permitted to lead evidence of an Architect or a Structural Engineer or such other expert before the learned District Judge. The parties were permitted to lead evidence in respect of the condition of the building in view of the language of Section 16(1)(i) of the Maharashtra Rent Act. The parties were permitted to examine only one expert witness each.

12. In pursuance thereof, the parties appeared before the learned District Judge. On behalf of the plaintiffs, Aqueelur Rahman, Structural Engineer filed affidavit of evidence dated 27.03.2017 and he was cross-examined by the defendants. The witness examined by the plaintiff also produced structural audit report of the building dated 18.03.2017 along with the photographs. Defendants filed examination-in-chief of Pravin Manohar Kowley, Structural Consultant dated 13.04.2017 and he was cross-examined by the plaintiffs' Advocate. After considering the material on record, the learned District Judge transmitted finding dated 25.04.2017. The learned District Judge held that the building in question is in a ruinous and dilapidated condition and accordingly answered the point. Defendants have also challenged the findings recorded by the learned District Judge on 25.04.2017.

13. In support of these Petitions, Mr. Bhirange strenuously contended that plaintiffs have not complied with requirements under Section 16(6) of the Maharashtra Rent Act. They have not produced the sanctioned plan. He invited my attention to admission of the plaintiffs' witness in

paragraph 7 of the cross-examination. In paragraph 7, plaintiffs' witness (plaintiff No.1) deposed that he is going to change entire building plan of C.T.S.No.425/B. He submitted that in terms of Section 16(6)(b) of the Maharashtra Rent Act, it is mandatory requirement that the plans and estimates of the new building or new floor / floors are properly prepared. In the present case, plaintiffs have not complied this mandatory requirement. He submitted that the proposal dated 28.11.2004 was finalized and defendants are ready and willing to comply with their part of the obligation. Under that proposal, plaintiff No.1 agreed to sell the premises in the newly constructed building on ownership basis. It was further agreed that for additional area, defendants will be required to pay additional amount. He submitted that on 08.02.2007, plaintiff No.1 terminated the proposal dated 28.11.2004. The plaintiffs have instituted Suit on 10.07.2007. Defendants have instituted Suit for specific performance of contract on 04.01.2010 which is pending. If the eviction decree is passed against the defendants, naturally, plaintiffs will demolish the existing structure, which will render the Suit for specific performance instituted by them infructuous.

14. Mr. Bhirange submitted that plaintiffs have not established that their requirement is, both, reasonable and bonafide. In fact, plaintiff No.1 is a developer and his requirement cannot be equated with the requirement of the plaintiff No.2, who is the landlord / owner. He submitted that even today, the Development Agreement executed between plaintiff No.1 and the owners is in existence. Mr. Bhirange relied upon the decision of this Court in ***Sharangdhar Vs. Sitaram, 1979 Mh.L.J.236*** to contend that having regard to the scheme of the Act, the provisions in Section 13 and the language used in sub-section (3-A) of Section 13 of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act') as the plaintiffs

have not complied requirement under Section 16(6), no decree for eviction can be passed. He invited my attention to paragraph 17 of the impugned order. In paragraph 17, the learned District Judge dealt with filing of undertaking under Section 16(6) of the Maharashtra Rent Act. He submitted that basically, plaintiffs have failed to establish that their need is reasonable and bonafide.

15. In support of his submission, he relied upon decision in ***Dinanath Vs. Gopala Krishna, 1990 (Supp) SCC 767***, and in particular paragraph 4. The Apex Court was considering provisions of Section 21 of the Karnataka Rent Control Act, 1961. In paragraph 4, the Apex Court observed that the expressions “reasonably” and “bona fide” require more than mere financial capacity and the sanction of the authorities was not appreciated by the High Court. These two expressions are present in clause (h) also, but that clause deals with a different situation and it cannot, therefore, be read into clause (1). But the expressions in both the provisions must be understood with reference to the evidence adduced by the landlord as to the reasonableness and the bona fide character of his requirements. While clause (h) refers to a landlord's requirement of occupation of an existing building, clause (1) refers to a vacant land required by the landlord for construction of new building. His reasonable and bona fide requirements must be established by the landlord, irrespective and independent of any sanction which he may have obtained from the local authority. That the landlord has obtained the necessary sanction of the local authority and that he is financially capable of constructing a building will not by themselves mean that his requirements are reasonable and bona fide. Although his financial capacity may be one of the elements which may be taken into account, that by itself, would not be sufficient to establish the reasonableness and the bona fide character of his requirements.

16. He also relied upon decision in ***Lily Gomes Vs. Francis Fernandes, 2000 (Supp.) Bom.C.R.572***, and in particular paragraph 11 thereof to contend that while considering the question of plaintiffs' requirement of the suit premises, it must be shown that the requirement is reasonable and bonafide and it is for the purpose of erecting a new building on the same site. He submitted that in the present case, plaintiff No.1 being a developer has not established that he requires the suit premises reasonably and bonafide for his own use and occupation. He further submitted that in any case, plaintiffs have no financial capacity as required in terms of Section 16(6) of the Maharashtra Rent Act. For all these reasons, he submitted that Petitions require consideration.

17. On the other hand, Mr. Jamdar supported the impugned orders and the findings dated 25.04.2017 recorded by the learned District Judge. He invited my attention to the language employed in Section 16(1)(g) and 16(1)(i) of the Maharashtra Rent Act. Whereas Section 16(1)(g) lays down that the premises are reasonably and bonafide required by the landlord for occupation by himself or by any person for whose benefit the premises are held, Section 16(1)(i) lays down that the premises are reasonably and bonafide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished. In short, he submitted that Section 16(1)(g) requires the landlord to establish his personal requirement and that requirement has to be reasonable and bonafide. Section 16(1)(i) however does not require that the requirement is that of landlord for his personal use and occupation. All that Section 16(1)(i) requires is that the premises are reasonably and bonafide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished. He further submitted that the Suits were instituted on

10.07.2007 and were dismissed on 16.01.2010. Hardly, 12 days before decision in the Suits, defendants herein instituted Suit for specific performance on 04.01.2010 when the termination notice was issued on 08.02.2007. He submitted that the Suit for specific performance is even otherwise barred by limitation. In any case, he submitted that even if eviction decree is passed against the defendants, Section 20 of the Specific Relief Act, 1963 will take care of the apprehension expressed by the defendants that their Suit will be rendered infructuous. He submitted that the equity in favour of the plaintiffs may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief for specific performance to the plaintiffs therein (defendants herein) at the trial and to award damages only in favour of the plaintiffs therein.

18. Mr. Jamdar has invited my attention to the evidence recorded before the learned District Judge in pursuance of the order dated 12.01.2017 and submitted that after considering the evidence adduced by the parties, the learned District Judge categorically recorded finding that the suit building is in a ruinous and dilapidated condition and the said finding is not challenged during the course of arguments. He has also invited my attention to the photographs which depict the condition of the building where the suit premises is situate. Mr. Jamdar relied upon the following decisions:

- a. ***Messers P. N. Shenoy Vs. B. V. Shenoy*, 1970(1) SCC 499**, and in particular paragraphs 11, 12 and 14 where the Apex Court has considered provisions of Section 21(1)(j) of the Mysore Rent Control Act, 1961.
- b. ***Metalware and Co. Vs. Bansilal Sarma and Co.*, (1979) 3 SCC 398**, and in particular paragraphs 6, 7 and 12 thereof.

19. Mr. Jamdar submitted that the learned District Judge was fully

justified in passing the eviction decree. He further submitted that plaintiffs are even willing to file undertaking before this Court showing compliance of Section 16(6) of the Act.

20. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, plaintiffs have instituted Suit for recovery of possession of the suit premises from the respective defendants under Section 16(1)(i) of the Maharashtra Rent Act. Section 16(1)(i) reads thus,

“16. When landlord may recover possession.- (1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied-

(i) that the premises are reasonably and bonafide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or”

21. In the case of **Metalware and Co.** (*supra*), the Apex Court considered Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960). In paragraph 6, it was observed thus,

“6. As stated earlier it cannot be disputed that the phrase used in s.14(1) (b) of the Act is "the building is bona fide required by the landlord" for the immediate purpose of demolition and reconstruction and the same clearly refers to the bona fide requirement of the landlord; it is also true that the requirement in terms is not that the building should need immediate demolition and reconstruction. But we fail to appreciate how the state or condition of the building and the extent to which it could stand without immediate demolition and reconstruction in future would be a totally irrelevant factor while determining "the bona fide requirement of the landlord". If the Rent Controller has to be satisfied about the bona fide requirement of the landlord which must mean genuineness of his claim in that behalf the Rent Controller will have to take into account all the surrounding circumstances including not merely the factors of the landlord

being possessed of sufficient means or funds to undertake the project and steps taken by him in that regard but also the existing condition of the building, its age and situation and possibility or otherwise of its being put to a more profitable use after reconstruction All these factors being relevant must enter the verdict of the Rent Controller on the question of the bona fide requirement of the landlord under S.14(1)(b). In a sense if the building happens to be decrepit or dilapidated it will readily make for the bona fide requirement of the landlord, though that by itself in the absence of any means being possessed by the landlord would not be sufficient. Conversely a landlord being possessed of sufficient means to undertake the project of demolition and reconstruction by itself may not be sufficient to establish his bona fide requirement if the building happens to be a very recent construction in a perfectly sound condition and its situation may prevent its being put to a more profitable use after reconstruction. In any case these latter factors may cast a serious doubt on the landlords bona fide requirement. It is, therefore, clear to us that the age and condition of the building would certainly be a relevant factor which will have to be taken into account while pronouncing upon the bona fide requirement of the landlord under S.14(1)(b) of the Act and the same cannot be ignored.”

22. Comparison of Section 14(1)(b) with Section 16(1)(i) shows that they are substantially identical. A perusal of paragraph 6 extracted hereinabove shows that the phrase “the building is bonafide required by the landlord” for the immediate purpose of demolition and reconstruction and the same clearly refers to the bonafide requirement of the landlord, and the requirement in terms is not that the building should need immediate demolition and reconstruction but at the same time, it was observed that the state or condition of the building and the extent to which it could stand without immediate demolition and reconstruction in future is a relevant factor while determining the bonafide requirement of the landlord. The Rent Controller for being satisfied about the bonafide requirement of the landlord which must mean genuineness of his claim in that behalf, the Rent Controller has to take into account, all the surrounding circumstances including not merely the factors of the

landlord being possessed of sufficient means or funds to undertake the project and steps taken by him in that regard but also the existing condition of the building, its age and situation and possibility or otherwise of its being put to a more profitable use after reconstruction. All these factors are relevant for considering the bonafide requirement of the landlord. In a sense if the building happens to be decrepit or dilapidated, it will readily make for the bonafide requirement of the landlord though that by itself in the absence of any means being possessed by the landlord would not be sufficient. Conversely, a landlord being possessed of sufficient means to undertake the project of demolition and reconstruction by itself may not be sufficient to establish his bonafide requirement if the building happens to be a very recent construction in a perfectly sound condition and its situation may prevent its being put to a more profitable use after reconstruction.

23. Applying the tests laid down by the Apex Court to the facts of the present case as also after considering the evidence on record adduced by the parties in pursuance of the order dated 12.01.2017, it is more than clear that the building is in a ruinous and dilapidated condition. As noted earlier, defendants have admitted that the building where the suit premises is situate is 40 to 50 years old. At this juncture, it is relevant to consider evidence of Pravin Manohar Kowley, Structural Consultant examined by the defendants. In paragraph 14 of his cross-examination, he admitted that after entering through Dindi Darwaja, there is one iron post at the distance of 10-12 feet. He admitted that the said post is there to support wooden beam of the first floor. He admitted that he did not mention this fact in his report. In paragraph 15, he deposed that there is one more iron post just 4-5 feet away from the iron post mentioned in paragraph 14 and it is towards Dindi Darwaja. He admitted that there is iron beam to support upper portion of the structure. He did not mention about the other iron post in his report.

24. With the assistance of the learned Counsel appearing for the parties, I have also perused the report prepared by the plaintiffs Architect – Structure Vizion, Consulting Engineers and Structural Designers as also photographs which form part of that report. The mere glance at these photographs will clearly substantiate the case of the plaintiffs that the building where the suit premises is situate is in a ruinous and dilapidated condition. After considering the evidence on record adduced by the parties in pursuance of order dated 12.01.2017, the learned District Judge ultimately recorded findings in paragraph 33 that the building in question is in a ruinous and dilapidated condition.

25. While allowing the Appeals, the learned District Judge noted that earlier, plaintiff No.1 had entered into development agreement with the owners of the suit building. Subsequently, plaintiff No.1 purchased 1/3rd share from the legal representatives of Purushottam Lagwankar and 1/3rd share from the legal representatives of Janardan Dattatray Lagwankar and thus has become owner of 2/3rd share in the suit property. The learned District Judge also noted in paragraph 12 that the bonafide requirement contemplated under Section 16(1)(i) is different than the requirement contemplated under Section 16(1)(g). In paragraph 13, the learned District Judge noted that the defendants did not dispute that the age of the building is above 50 years. In paragraph 14, the learned District Judge noted that the plaintiff No.1 categorically stated in his affidavit of evidence that he has prepared revised plans of the building through his Architect Pramod Sutar and he is having sufficient funds to complete the construction work costing Rs.49,00,000/-. It has come on record and also it was argued by Mr. Bhirange that plaintiff No.1 has completed 80 projects in Pune City. In paragraph 15, the learned District Judge has considered financial position of the plaintiffs for raising sufficient funds for completing the construction. The learned District Judge also referred to the decision of this Court in **Chandrakant**

Bhalchandra Nalavadkar Vs. Hiralal Mulchand Shah, 1984 (1) Bom.C.R. 480 where this Court observed that considering the long journey of rent suits filed on the ground of bonafide requirement to demolish and erect new building in its place and time required for obtaining actual possession of the premises, non filing of sanctioned plan at the time of suit by itself is not sufficient to refuse to pass the decree. Thus absence of plan of the date of the Suit by itself will not militate against the bonafides of landlord. In paragraph 17, the learned District Judge dealt with the aspect of undertaking. The learned trial Judge declined to pass decree on the ground that those undertakings were not filed along with the plaint itself. The learned District Judge also dealt with the pendency of the Suit filed by the defendants for specific performance of contract against the plaintiffs on the basis of proposal dated 28.11.2004.

26. After considering the evidence on record as also the evidence adduced by the parties in pursuance of order dated 12.01.2017 passed by this Court, I do not find that the learned District Judge committed any error in allowing the Appeals.

27. Mr. Bhirange relied upon the decision of **Sharangdhar** (*supra*). In that case, the learned Single Judge considered provisions of Section 13(1)(hh) read with Section 13(3-A) of the Bombay Rent Act. It was observed that provisions of 13(3-A) are directory and not mandatory. The words “No decree for eviction shall be passed ...” indicate that the intention was to prohibit passing of a decree unless there is compliance of the provision and not to bar the proceedings in a suit from going on. In the present case, the learned District Judge has held that the undertaking furnished by the plaintiffs comply with the requirement of Section 16(6). Even otherwise, plaintiffs have shown their readiness and willingness to file undertaking in this Court complying with requirement

of Section 16(6). I, therefore, do not find that the said decision advances the case of the defendants.

28. In the case of **Dinananth** (*supra*), the Apex Court has considered provisions of Section 21 of the Karnataka Rent Control Act, 1961. I have already dealt with paragraph 4 of that decision. In my opinion, the said decision is also not of any assistance to the defendants. In the case of **Lily Gomes** (*supra*), the learned Single Judge has dealt with the aspect of plaintiffs' requirement of suit premises and it was observed that it must be shown that the said requirement is reasonable and bonafide and it is for the purpose of demolishing the premises and that the demolition is to be made for the purpose of erecting a new building on the same site. In that case, the Court was considering the requirement of plaintiffs vis-a-vis the requirement of builder. The Appeal Court, after considering the material on record, held that the requirement pleaded in the plaint was not of the plaintiff but the requirement was of their builder who was authorized to reconstruct the flats and sell the same for consideration. In my opinion, the said judgment is also not applicable in the facts of the present case.

29. Mr.Bhirange submitted that if the eviction decree is passed against the defendants, the Suit instituted by the defendants herein for specific performance will be rendered infructuous. It is not possible to accept this submission for more than one reason. In the first place, plaintiff No.1 had terminated the proposal dated 28.11.2004 on 08.02.2007. The present Suits are instituted on 10.07.2007. Defendants have instituted Suits for specific performance on 04.01.2010. The Suits for eviction were dismissed on 16.01.2010. Apart from that, as per Section 20 of the Specific Relief Act, 1963, the jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so but the discretion of the Court

is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal. In other words, the Suit/s instituted by the defendants herein for specific performance may be decreed, or may not be decreed. It, therefore, cannot be countenanced that the Suits instituted by the plaintiffs for eviction of the defendants should have been kept in abeyance till the decision in Suit/s for specific performance of contract. It is also common knowledge that the decree passed in the Suit filed for specific performance may be challenged by either party. In such state of affairs, it will be neither practicable nor advisable to keep the eviction Suit in abeyance till the decision in Suit/s for specific performance of contract. Apart from that, if the existing structure is demolished and the plaintiff proceeded to construct the premises in terms of Section 16(1)(i) and (6), defendants will be given an equivalent area in the newly constructed building. The defendants can be compensated for the loss of area by awarding damages.

30. In the light of the aforesaid discussion, I do not find that the learned District Judge has committed any error in allowing the Appeals. The defendants were not in a position to demonstrate that the findings recorded by the learned District Judge are perverse, being based upon no evidence or that they are contrary to the evidence on record. Defendants were also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the learned District Judge. Merely because on the evidence on record, another view is possible, that itself is no ground for invocation of powers under Article 227 of the Constitution of India. Hence, Petitions fail and the same are dismissed.

31. It is made clear that the observations made herein are only for the purpose of considering the submissions of the defendants that after demolishing the existing structure, the Suits filed by the defendants will

be rendered infructuous. The Court seized of the Suits for specific performance will decide the same uninfluenced by the observations made herein and on the basis of the evidence on record and in accordance with law.

32. Mr. Jamdar submits that plaintiffs will file undertaking in this Court in compliance of Section 16(6) of the Act, within two weeks from today, with advance copy to the other side.

33. List the Petitions for acceptance of undertaking on 09.08.2018.

(R. G. KETKAR, J.)

Minal
Sandip
Parab

Digitally signed by
Minal Sandip
Parab
Date: 2018.08.02
07:59:34 -0400

Minal Parab