

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.450 OF 2018

Mahesh C. Mathur ... Applicant
Vs.
Rohinton Eruch Shroff and others ... Respondents

Mr. P. S. Dani, Senior Advocate i/b. Mr. Sameer R. Bhalekar for Applicant.
Mr. Nishant Vyas a/w Mr. Yagnesh Vyas for Respondents No.1 to 3.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 03, 2018

P.C. :

Heard Mr. Dani, learned Senior Counsel for the applicant and
Mr. Vyas, learned Counsel for the respondents No.1 to 3 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 10.05.2012 passed by the learned Judge, Court Room No.16 of the Small Causes Court at Mumbai in R.A.E. Suit No.143/214 of 2007 as also the judgment and decree dated 04.06.2018 passed by the Appellate Bench of the Small Causes Court in (A-1) Appeal No.60 of 2012. By these orders, the Courts below decreed the Suit instituted by the respondents, hereinafter referred to as 'plaintiffs', under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the defendant to handover vacant and peaceful possession of flat No.5 and garage No.8 situate in the building, namely, "Maison Belvedere" in Maison Co-operative Housing Society Limited, 107, Maharshi Karve Road, Mumbai 400 020 (for short 'suit premises') to the plaintiffs.

3. In support of this Application, Mr. Dani submitted that plaintiffs claimed possession of the suit premises on the ground that plaintiffs

No.1 and 2 have two cars and they require garage No.8 to park their vehicles. They are parking their vehicles on the public road i.e. outside compound of the society for want of any additional parking facility for their cars. Plaintiff No.3 has claimed possession of flat No.5 on the ground that he has been compelled to shift at Deolali, Nashik. Plaintiff No.3 has residential premises on tenancy basis on the 4th floor of Umrinagar Building at Chira Bazar, Mumbai 400 002. The said Umrinagar Building has no lift facility. Plaintiff No.3 has undergone couple of operations, one for broken knees and the other of hip joints. He has been advised not to climb stairs. He has also annexed Certificate of Disability dated 16.03.1990 by Dr. Taraporwala of Sir J. J. Hospital. He submitted that the suit premises were acquired on 07.12.2006 and the present Suit is instituted on 05.02.2007.

4. Mr. Dani submitted that in paragraph 10(i) of the written statement, defendant specifically asserted that plaintiffs No.1 and 2 have acquired a building known as 'Jer Villa' situate at 641, Off Khare Ghar Road No.9, Parsi Colony, Dadar (East), Mumbai 400 014. The said Jer Villa Building has two wings, each comprising of ground plus two upper floors and each floor has two flats, aggregating to 6 flats in total. The said building also has two garages and open compound. In R.A.E. Suit No.78/132 of 2000, plaintiffs have obtained a decree of eviction in respect of flat No.2. In paragraph 10(iii), defendant contended that plaintiffs No.1 and 2, as Directors of M/s. Shroff Sons Consultancy Pvt. Ltd. (for short 'said company'), have purchased Jer Villa building . The paid up share capital of the said company is Rs.20 lakhs and the said shares are divided between plaintiffs No.1 and 2. One of the cars Opel Corsa is used by the plaintiff No.1 as a Director of the said company and that the said car is parked in the lane in North side outside the Maison Belvedere building compound. Plaintiff No.1 is a Chairman of Maison

Belvedere Co-op. Housing Society Ltd. In paragraph 10(v), it is asserted that plaintiffs No.1 and 2 as the Directors of the said company have acquired flat No.4 in Maison Belvedere, which is adjacent to flat No.5, namely suit flat. Flat No.4, though is a residential flat, is used by the said company for the office purpose.

5. Mr. Dani has also invited my attention to paragraph (4B) of the plaint where plaintiffs contended that the property known as Jer Villa, 641, Road No.9, Off. Khareghat, Dadar Parsee Colony, Dadar (East), Mumbai 400 014 is owned by the said company and not by the plaintiffs No.1 and 2. He has taken me through the evidence of plaintiff No.1 Rohinton Shroff. In cross-examination, he admitted that plaintiff No.3 is his uncle. In paragraph 3 of his cross-examination, he admitted that he does not have any car in his individual name. He does not own two cars. The car which he is referring is owned by the said company. In paragraph 6, he admitted that premises (flat No.4) next to the flat No.5 (suit flat) is acquired in the year 2006. Plaintiffs No.1 and 2 (husband and wife) have accounts with ABN Amro Bank. Plaintiff No.1 has account with Central Bank of India. He denied that the amount of Rs.7,00,000/-, which was paid by the plaintiff No.3, was towards his share for purchase of the suit premises and was in fact debited to the account of plaintiff No.3 from his account. He admitted that Rs.7,00,000/- were credited to the account of plaintiff No.3 from his account. He volunteered that Rs.7,00,000/- was given as a loan to the plaintiff No.3. Mr. Dani submitted that though the value of flat No.5 is more than Rs.45,00,000/- at the relevant time, the consideration was shown as Rs.21,00,000/- and plaintiff No.3, having 1/3rd share, claims to have paid consideration of Rs.7,00,000/-. In paragraph 9, plaintiff No.1 admitted that plaintiff No.3 is well settled in Deolali.

6. Mr. Dani has invited my attention to evidence of plaintiff No.3 and in particular paragraph 2 of his cross-examination. In cross-examination, plaintiff No.3 admitted that he is residing at Deolali since 1994-95. In paragraph 7, he admitted that he has two bank accounts. In Mumbai, he has bank account only with Central Bank of India. Lately, he has made plaintiff No.1 as a joint holder. Mr. Dani submitted that the Courts below committed serious error in decreeing the Suit under Section 16(1)(g) of the Act. He submitted that plaintiff No.3 has not paid any consideration for purchasing the suit premises. The name of the plaintiff No.3 is shown as co-owner only for the purpose of instituting the present Suit for recovery of possession of flat No.5. Plaintiff No.3 is well settled in Deolali. As the plaintiff No.3 is settled down in Deolali, the need pleaded by him for possession of flat No.5 is neither reasonable nor bonafide. He, therefore, submitted that the Application requires consideration.

7. On the other hand, Mr. Vyas supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the Suit. He submitted that it has come on record that wife of the plaintiff No.3 is residing in Mumbai. Though the plaintiff has premises in Umrinagar building, it is on the fourth floor with no lift. Plaintiff No.3's relatives are residing in Mumbai, and therefore, it is but natural for him to shift to Mumbai. He submitted that just 10 days back, wife of plaintiff No.3 has expired. Plaintiff No.3 is alone. Even otherwise, he now badly wants to shift to Mumbai. He, therefore, submitted that no case is made out for interfering with the impugned orders.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. Plaintiffs No.1 and 2 are claiming possession of garage No.8 on the ground that though they are owners of two cars, they do not have place for parking their vehicles. They are compelled to park their two vehicles on a public road outside the compound of the society, where the suit premises is situate. Plaintiffs No.1 and 2 are husband and wife. Plaintiff No.3 is uncle of the plaintiff No.1. Plaintiff No.3 has claimed possession on the ground that he is having residential premises in Umrinagar Building. That premises is on tenancy basis and is situate on the fourth floor of the said building. The said building has no lift facility. Plaintiff No.3 has undergone couple of operations, one for broken knees and the other of hip joints. He has been advised not to climb stairs.

9. The Courts below, after appreciating the evidence on record, have decreed the Suit. In so far as the trial Court is concerned, the learned trial Judge has considered various decisions on the ground of bonafide requirement from paragraphs 22 to 31. In so far as the requirement of plaintiffs No.1 and 2 is concerned, the learned trial Judge has considered this aspect from paragraph 32 onwards. In paragraph 32, the learned trial Judge noted that plaintiff No.1 stated that the said company has office in flat No.4 in Maison Belvedere building (for short 'said building'). He comes to the office in his car. Plaintiff No.2, who is wife of plaintiff No.1, is also one of the Directors of the said company. The company has provided Wagon R car to her. It has come in his evidence that he used to park his car outside the compound of the said building. He admitted that for parking the car in front of the suit building in the parking space of M.C.G.M., the occupants of the said building are not required to pay parking charges. He has further stated that sometime he does not get parking space near the said building and he has to park his car in the next 2-3 lanes, which consumes about half an hour. In paragraph 33, the learned trial Judge noted that mostly the vehicles are parked on both

sides of the roads but still one may not get space to park his vehicle. If plaintiffs No.1 and 2 have purchased the suit premises (garage No.8) with a view to parking their vehicles in the garage, which is a part and parcel of the suit premises, there is nothing wrong in it.

10. In paragraph 34, the learned trial Judge dealt with the contention of the defendants that plaintiffs No.1 and 2 do not own their personal cars and during the pendency of the Suit, plaintiff No.1 purchased a car only for the purpose of the present Suit. The learned trial Judge observed that the said company of which plaintiffs No.1 and 2 are directors own two cars, which have been provided to them. Defendant contended that if the cars are owned by the said company, it cannot be said to be the requirement of the plaintiffs No.1 and 2 about parking of vehicles. At the highest, it can be the requirement of the said company. The learned trial Judge repelled that contention by observing that the said company is the family concern of the plaintiffs No.1 and 2 of which they are the Directors.

11. In paragraph 35, the learned trial Judge dealt with the contention of the defendant that in the compound of the said building, parking spaces are available and plaintiffs No.1 and 2 could have applied to the society for allotment of the parking space. The learned trial Judge observed that it has come on record that society has allotted parking space to the defendant for parking his additional car in the compound of the society, which was taken back in the year 2007. P.W.1 admitted that car parking space allotted to the defendant had been allotted to Mr. Daruwalla. P.W.1 further admitted that there are 25-30 cars in the building and the availability of open car parking space in the compound space is limited. It has also come on record that after surrendering car parking space by the defendant, he is parking his car outside the compound of the society. The defendant has not produced any evidence

about availability of ample car parking space in the compound of the society. P.W.1 admitted that since last 2 years, he is the chairman of Maison Belevedere society and there is waiting list of members who have applied for car parking space. The learned trial Judge further observed that considering the tenements in the building and availability of the limited car parking space, it cannot be said that plaintiffs No.1 and 2 can park their cars in the compound of the society when they go to the office in flat No.4.

12. In paragraph 36, the learned trial Judge noted that D.W.1 in his cross-examination admitted that some of the members of the society are parking their vehicles outside the suit building due to non-availability of the parking space in the compound of the society. He also admitted that he did not make any enquiry with the society about availability of the parking space.

13. In paragraph 37, the learned trial Judge noted contention of the defendant that plaintiffs No.1 and 2 are the owners of the buildings and properties at Dadar and Parel, where they can park their vehicles. The learned trial Judge repelled that contention by observing that the said company owns those buildings but the suit premises is situate near Churchgate. It cannot be expected that a person going to office at Churchgate, will park his vehicles at Parel / Dadar. Ultimately, in paragraph 38, the learned trial Judge recorded a categorical finding that requirement of the plaintiffs No.1 and 2 for parking their cars is reasonable and bonafide and cannot be termed as fanciful.

14. In so far as the requirement of the plaintiff No.3 is concerned, the learned trial Judge has considered this from paragraph 39 onwards. In paragraph 39, the learned trial Judge observed that plaintiff No.3 deposed that he worked in Mumbai in various companies and was

residing throughout his life in Mumbai. He was residing on the fourth floor of Umrinagar Building at Chira Bazar, which is a tenanted premises. There is no lift facility. According to him, he has undergone surgeries and he is unable to climb the stairs. Due to non-availability of the other suitable premises on the ground floor, he was forced to shift to Deolali. He shifted to Deolali in the year 1994-95. According to him as the suit premises is situate on the ground floor, it is convenient to him to reside along with his wife. In paragraph 40, the learned trial Judge noted that plaintiff No.3 admitted that he used to visit Mumbai at least once in a month and due to non-availability of the suitable premises, he used to return back to Deolali on the same day and in case of emergency, he used to stay in flat No.5 in the said Building. It has come on record that he had worked in various companies in Mumbai.

15. In paragraph 42, the learned trial Judge dealt with the contention of the defendant that his wife has not visited plaintiff No.3 at Deolali on the ground that it has come on record from evidence of P.W.1 and P.W.2 that plaintiff No.3 frequently used to talk with his wife on phone. Plaintiff No.3 and his wife are of advanced age. It might not be possible for her to visit Deolali because of her advanced age. In paragraph 43, the learned trial Judge dealt with the submission of the defendant that the certificate of Sir J. J. Hospital produced by the plaintiffs is not proved. The learned trial Judge observed that P.W.2 (plaintiff No.3), during the course of cross-examination, admitted that he was operated for hip-joints in a hospital at Nasik. Even it is accepted that there is no medical evidence in respect of ailments of the plaintiff No.3, considering his age i.e. 76 years of old, it would not be possible for him to climb four stories of Umrinagar Building, which has more than 84 steps.

16. In paragraph 45, the learned trial Judge dealt with the contention of the defendant that plaintiff No.3 has not paid consideration from his

own funds for purchasing the suit premises and still his name is included in the Deed of Transfer only for the purpose of the Suit. The learned trial Judge observed that Rs.7,00,000/- was credited from the accounts of plaintiffs No.1 and 2 . P.W.1 deposed that he had given loan to plaintiff No.3 for the purpose of purchasing the suit premises. Plaintiff No.3 is uncle of plaintiff No.1 P.W.2 (plaintiff No.3) in his cross-examination admitted that he had made nomination of plaintiff No.1 in respect of some of his properties. The learned trial Judge, therefore, observed that in view of the close relation of the plaintiffs No.1 and 3, it might be their internal arrangement. After considering the various judgments dealing with the ground of reasonable requirement, the learned trial Judge ultimately held in paragraph 54 that the requirement of the plaintiffs is reasonable and bonafide.

17. In so far as the question of comparative hardship is concerned, the learned trial Judge has considered this aspect from paragraph 55 onwards. The learned trial Judge noted that defendant is a Chartered Accountant practising in Mumbai. He is having his office at Kakad House, Near Liberty Cinema, Mumbai 400 020. In paragraph 56, the learned trial Judge observed that besides premises at Kakad House, he has two other premises, one at Andheri and another at Mira Road. The premises at Andheri is situate in Shiv Shakti Co-op. Housing Society. It is a row house consisting of two floors having area of about 40 sq.mtrs. According to the defendant, his daughter has purchased the said premises, who is married and residing in London. He is using that premises for keeping office record and paying monthly compensation of Rs.4,000/-. The premises at Mira Road is also a residential premises admeasuring 500 sq.ft., which belongs to defendant's second daughter Priya. He admitted that she is married and residing at New York. He further admitted that since last 9-10 years, Priya is settled at New York. The plaintiffs produced receipt of payment of municipal taxes, which

shows that premises at Mira Road standing in the name of Priya and Dolly Mathur (wife of the defendant). It was also noted that defendant has not produced document regarding purchase of both the properties. It, however, appears that properties were purchased before the marriage of the daughters. It is not clear as to whether the daughters of the defendant were having independent source of income for purchasing the properties at Andheri and Mira Road. The learned trial Judge also noted that since inception, defendant is making payment of outgoings of the said flats and is also in occupation of both the flats. Wife of the defendant is a co-owner of flat at Mira Road. Hence, it can be safely inferred that suitable alternate premises are available to the defendant.

18. In paragraph 59, the learned trial Judge noted that the financial position of the defendant is very sound and observed that the defendant has sufficient funds to acquire alternate accommodation. In paragraph 61, the learned trial Judge noted the fact that the defendant could not give detailed explanation about the search made by him of the alternate accommodation. Ultimately, in paragraph 66, the learned trial Judge answered the question of comparative hardship in favour of the plaintiffs.

19. In so far as the Appellate Court is concerned, from paragraphs 21 to 29, the Appellate Court considered the evidence adduced by the plaintiffs No.1 and 2 for substantiating their requirement of garage. In paragraph 30, the Appellate Court considered the evidence of plaintiff No.3 for substantiating requirement of flat No.5. From paragraphs 31 to 36, the Appellate Court considered the evidence adduced by the defendant. In paragraph 37, the Appellate Court considered the relevancy of evidence adduced by the parties. From paragraphs 38 to 46, the Appellate Court considered the submissions of the defendant on the issue of bonafide requirement and referred to the decisions relied by the

defendant. From paragraphs 47 to 60, the Appellate Court considered submissions advanced on behalf of the plaintiffs on the issue of bonafide requirement. From paragraphs 61 to 67, the Appellate Court dealt with the question of comparative hardship. From paragraphs 68 to 79, the Appellate Court dealt with the application exhibit-31 filed by the defendant under Order XLI, Rule 27 of C.P.C. for adducing additional evidence and rejected that application. From paragraph 80, the Appellate Court considered bonafide requirement of plaintiffs No.1 and 2. It was observed that the plaintiffs No.1 and 2 are the directors of the said company. Plaintiffs No.1 and 2 are provided two separate cars. They have office in flat No.4 and there is no parking facility in the compound of the building. In paragraph 81, the Appellate Court observed that the requirement pressed into service by plaintiffs No.1 and 2 is not artificial or unreasonable. In paragraph 82, the Appellate Court observed that parking space available to the plaintiffs at Dadar cannot be considered as sufficient for them to have access to their office situate in flat No.4. The Appellate court concluded that the requirement of plaintiffs No.1 and 2 is reasonable and bonafide. In paragraphs 83 and 84, the Appellate Court considered requirement of plaintiff No.3 in respect of flat No.5. In paragraph 83, the Appellate court noted that plaintiff No.3 has rented premises at Umarigar Building. Because of his physical condition, he cannot climb steps upto 4th floor. Undisputedly, plaintiff No.3 is more than 80 years of age and judicial notice can be taken that it would not be practicable for him to climb stairs upto the 4th floor. In paragraph 84, the Appellate Court noted that plaintiff No.3 has spent his entire life in Mumbai till his retirement. He has his relatives, friends and his wife at Mumbai. He has bank accounts, investments and he has to take care of them. Obviously, he requires the suitable premises at Mumbai.

20. From paragraphs 85 to 91, the Appellate Court considered the question of comparative hardship and answered it in favour of the

plaintiffs. Mr. Vyas submitted that during the pendency of the C.R.A., just 10 days back, wife of plaintiff No.3 has expired. Plaintiff No.3 is alone. Even otherwise, he now badly requires to shift to Mumbai.

21. Thus, after appreciating the evidence on record, the Courts below have concurrently decreed the Suit under Section 16(1)(g) of the Act. The submissions advanced by Mr. Dani are at the highest could be said to be appreciation of evidence on record. 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 decreed the Suit.

22. 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.

23. At this stage, Mr. Bhalekar orally applies for continuation of the ad-interim order dated 04.09.2018 for a period of 12 weeks from today. He states that applicant along with his wife is residing in the suit premises and nobody else is residing in the suit premises. He assures that applicant along with his wife will file 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, 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 plaintiffs;

24. In view thereof, notwithstanding dismissal of C.R.A., ad-interim order dated 04.09.2018 shall remain in force 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 plaintiffs, the plaintiffs will be at liberty to execute the decree in accordance with law. Order accordingly.

25. Mr. Bhalekar submits that till May, 2018, applicant has deposited the compensation in the Small Causes Court, as fixed by the Appellate Court and within two weeks from today, he will deposit the compensation from June, 2018 till December, 2018 (covering 12 weeks period from today) under intimation in writing to the respondents' Advocate.

26. In view thereof, respondents No.1 and 2 are permitted to withdraw the amount deposited by the applicant in the Small Causes Court, unconditionally.

27. All parties, including the trial Court, to act upon the authenticated copy of this order.

28. List the Application for 'reporting compliance' after three weeks.

(R. G. KETKAR, J.)

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