

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.417 OF 2018

Sevantilal S. Kapashi ... Applicant
Vs.
Jayantilal Lalchand Shah (deleted) since
deceased through Shrenik Jayantilal Shah
and others ... Respondents

Mr. G. S. Godbole, Senior Advocate i/b. Mr. J. S. Hegde for Applicant.
Mr. Kapil R. Shah for Respondents No.2 to 5.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 1, 2018

P.C. :

Heard Mr. Godbole, learned Senior Counsel for the applicant and
Mr. Shah, learned Counsel for respondents No.2 to 6 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 15.09.2006 passed by the learned Judge, Court No.32 of the Court of Small Causes at Mumbai, Bandra Bench in R.A.E. Suit No.939 of 2002 as also the judgment and decree dated 06.07.2018 passed by the Appellate Bench of the Small Causes Court in Appeal No.25 of 2007. By these orders, the Courts below decreed the Suit instituted by the plaintiffs under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the defendant to handover possession of garage situate in Building Kamla Niketan, Dr. Bhawandas Indraj Road, Mumbai 400 006 (for short 'suit premises') to the plaintiffs.

3. In support of this Application, Mr. Godbole submitted that

plaintiff - Smt. Shantidevi Lalchand Chhaganlal Foundation (for short 'Trust') has not examined any trustee. He submitted that in order to prove the ground of reasonable and bonafide requirement under Section 16(1)(g) of the Act, one of the trustees of plaintiff Trust ought to have entered into the witness box. The plaintiffs examined P.W.1 Haresh Babulal Shah, claiming to be employee of the Trust. He submitted that though P.W.1 claimed to be in the employment of the Trust since 1984 and the Suit is instituted in the year 2002, he is not personally aware of the affairs of the Trust. In fact, from the admissions given by P.W.1 during the course of cross-examination, it would be evident that plaintiffs have not established the ground of bonafide requirement. The Courts below failed to appreciate that employee cannot depose on behalf of the landlord Trust. The Courts below also failed to draw adverse inference against the plaintiffs.

4. Mr. Godbole further submitted that the plaintiffs pleaded requirement for the use of the suit premises for office purposes. This is in contravention of the provisions of Section 30 of the Act. The plaintiffs cannot be permitted to change user of the suit premises from garage to the office purposes. Finally, Mr. Godbole submitted that plaintiffs have not established their reasonable and bonafide requirement. He has taken me through the evidence of P.W.1 to substantiate his contention that P.W.1 does not know the affairs of the Trust. Plaintiffs have not brought on record other premises that are available to them for office purposes. He submitted that the impugned orders are perverse and, therefore, Application requires consideration.

5. On the other hand, Mr. Shah supported the impugned orders. He submitted that P.W.1 specifically deposed in paragraph 6 that plaintiff-Trust does not have its own office premises from where it can run the

affairs of the Trust. As far as the premises in Raheja Centre is concerned, the learned Single Judge of this Court (Coram: S. J. Kathawalla, J.) in Notice of Motion No.1816 of 2018 in Commercial Suit No.1111 of 2018 recorded bringing of offer by defendant No.1 Bahubali Estates Pvt. Ltd. on or before 07.10.2018, failing which the Court Receiver will be appointed in respect of the premises in Raheja Centre with power to put the same for sale by public auction. He further submitted that after appreciating the evidence on record, the Courts below have held that plaintiffs have established their requirement as reasonable and bonafide and therefore, no case is made out for interfering with the impugned order.

6. I have considered the submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In so far as the contention of Mr. Godbole that trustees did not enter into witness box is concerned, the Courts below have dealt with this contention. In paragraph 25, the Appellate Court referred to the decision of the Division Bench of this Court in ***Nathulal Gangabaks Khandelwal Vs. Nandubai***, AIR 1984 Bombay 340 and reproduced paragraph 12, which reads thus,

“12. With respect we do not find ourselves in agreement with the proposition which has been adumbrated by the learned single Judge in the extract quoted above. What is required to be done by a landlord for obtaining possession under Section 13[1][g] Of the Bombay Act or under Clause 13 [3] [vi] of the Rent control Order for permission to determine the tenancy is to establish that he needs or requires the premises bona fide for his own use and occupation. The question whether the landlord so requires or needs the premises or the house 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. Neither the provisions of the Bombay Act nor the Rent control Order make any provision as to how and in what way the landlord has to establish these two facts. Under Section 13[3][vi] he has to satisfy the Rent Controller. It would appear that the evidence which the

landlord would be sufficient to satisfy the Court or the Rent Controllers as the case may be. In the absence of any specific provision as to how the need or the requirement has be established, these facts could be proved by the landlord by adducing any evidence which satisfies the Court or the Rent Controller. It may be that certain facts which are needed to establish theses requirements are in the personal knowledge of the landlord alone and could not be proved unless he is examined. In such a case it may be necessary for the landlord to step in the witness-box and the authority concerned may not accept any other evidence. But if these two factors can be established by any other evidence, than that of the landlord by putting on record circumstances which sufficiently indicate that the landlord requires the premises bone fide for his use and occupation, we fail to see why it should be necessary as a matter of law that the landlord must examine himself with fatal consequence if he omits to do so. It may be as has been said by the learned single Judge in Nanalal's case (AIR 1981 Bom.1) that bona fide requirement is state of mine though it may be something more. But if what is required to be established is bonafide requirement, one fails to see why it should be necessary to be done only by the evidence of the landlord and none else if such requirement can be established to the entire satisfaction of the authorities concerned by any other evidence. In our view, the learned single Judge has laid down the proposition in a very wide, absolute and bona fide requirement of the landlord should or should not be accepted in a given case in the absence of the evidence of the landlord himself, would depend upon the facts and evidence in that particular case and any absolute proposition as has been done by the learned single Judge cannot be laid down in this behalf. It is for these reasons that we, with great respect to the learned single Judge, do not agree with what he has said and in our view Nanalal's case does not lay down the correct law in this respect.”

7. A perusal of the above extracted portion shows that the Division Bench held that the question whether the landlord so requires or needs the premises or the house and whether such need or requirement is bona fide or not is a question of fact which of course the landlord has to establish for succeeding in the matter. The Division Bench further held that the absence of any specific provision as to how the need or the requirement has be established, these facts could be proved by the

landlord by adducing any evidence which satisfies the Court. It may be that certain facts which are needed to establish these requirements are in the personal knowledge of the landlord alone and could not be proved unless he is examined. In such a case, it may be necessary for the landlord to step into the witness-box and the authority concerned may not accept any other evidence. But if these two factors are established by any other evidence, than that of the landlord by putting on record circumstances which sufficiently indicate that the landlord requires the premises bone fide for his use and occupation, it is unnecessary for the landlord to examine himself and omission to do so will result in fatal consequences. It was further observed that what is required to be established is bonafide requirement, one fails to see why it should be necessary to be done only by adducing evidence by the landlord. In the light of this decision, the Appellate Court proceeded to consider evidence of P.W.1 Haresh Babulal Shah. In paragraph 25, the Appellate Court observed that P.W.1 is the only employee of the plaintiff Trust. Since 1984, he has been working with the plaintiff Trust. The Suit is instituted in the year 2002. Thus, all these facts are definitely within his knowledge being employee of the plaintiff Trust. In view thereof, I do not find any merit in the submission of Mr. Godbole that as the trustees of the plaintiff Trust did not enter into witness-box, the Courts below failed to draw adverse inference or that failure to examine any of the trustees is fatal. In any case, the Courts below, after appreciating the evidence on record, have concurrently decreed the Suit. The findings of facts are recorded by the Courts below after appreciating the evidence on record.

8. In so far as the contention that plaintiffs intend to use the suit premises for office purposes which amounts to change of user and that the same is prohibited in view of Section 30 of the Act is concerned, the

Courts below have considered this aspect. In particular, in paragraph 33, the Appellate Court has referred to Section 347A and 347B of Mumbai Municipal Corporation Act, 1888. That Section lays down that no person shall, without the written permission of the Commissioner, use or permit to be used any premises for the purpose other than for which originally it is sanctioned. The Appellate Court, in paragraph 35, noted that the suit premises is used for non-residential purpose, that is, for parking a vehicle. The plaintiffs require the suit premises for non-residential purpose. The plaintiff, being a charitable Trust, cannot be said that it will carry on commercial activities from the suit premises. The Appellate Court, therefore, held that it cannot be said that plaintiffs are going to change user of the suit premises.

9. In so far as the contention that the plaintiffs have not brought any evidence on record to the effect that there are no other premises in their possession and that they have not established their requirement is bonafide is concerned, I do not find any merit in this submission. In paragraph 6 of the examination-in-chief, P.W.1 specifically deposed that plaintiff Trust does not have its own office premises from where it can run the affairs of the Trust. In paragraph 30, the Appellate Court noted that during the course of cross-examination, defendant deposed that plaintiff Trust has premises at Borivali but later on he admitted that he never visited the said place. In paragraph 31, the Appellate Court noted that defendant has not produced any evidence on record to prove that the requirement of the plaintiff Trust is malafide or unreasonable or that plaintiff Trust has already independent office or other premises to accommodate the office. Thus, after considering the evidence on record, the Courts below have decreed the Suit. As observed by the Division Bench in paragraph 12 of Nathulal Gangabaks Khandelwal (*supra*), the question whether the landlord requires or needs the premises and

whether such need or requirement is bonafide or not is a question of fact. That apart, it has come on record that earlier, defendant was residing in Kamla Nitketan as a tenant. He had left the residential premises allotted to him but continued to occupy the suit premises, namely, garage. In view thereof also, in my opinion, this is not a fit case for interfering with the impugned orders.

10. 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. 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, Applications fail and the same are dismissed.

11. At this stage, Mr. Godbole orally applies for stay of the eviction decree for a period of 6 weeks from today. He states that within two weeks from today, defendant and all adult members using the suit premises will file usual undertaking in this Court 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) in case they are unable to obtain suitable orders from the higher Court within six weeks from today, they will hand over vacant and peaceful possession of the suit premises to the plaintiffs;

12. In view thereof, notwithstanding dismissal of C.R.A., eviction

decree shall not be executed for a period of 6 weeks from today subject to the defendant and all adult members using the suit premises filing undertaking in the aforesaid terms within two weeks from today in this Court. 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 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 six 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.

13. List the Application for 'reporting compliance' on 29.10.2018.

(R. G. KETKAR, J.)

Minal Parab