

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.280 OF 2010

1.Shri.Hasan @ Harun Yusuf Ravi & Ors. .. Applicants
vs
1. Smt.Nurzaha Murtuja Bhure & Anr. .. Respondents

Ms.Gauri Godse, for the Applicant.

Mr.Mandar Limaye, for Respondent Nos.1 and 2.

CORAM: G.S.KULKARNI, J.

DATE: 16th JANUARY, 2018

ORDER:-

1. This is a landlord's/plaintiff's civil revision application assailing the concurrent findings against him, of the trial Court and the appellate Court. The applicants' eviction suit instituted against the respondents-tenants was dismissed by the learned trial Judge, and confirmed by the judgment of the appellate Court.

2. The applicant had instituted Regular Civil Suit no.11 of 1999 before the Court of Civil Judge, Junior Division, Palghar, praying for a decree of eviction against the respondents on the grounds of arrears of rent, bonafide requirement, sub-letting and acquisition of alternate premises. In regard to the issue of arrears of

rent as raised by the applicant-plaintiff, the learned Trial Judge observed that the respondents on the date of appearance had deposited in the Court the entire amount of arrears of rent, alongwith costs and interest and thus had shown their intention of willingness and readiness to pay/ deposit the rent of the suit premises. The court also observed that the respondents-defendants were offering rent to the applicant-plaintiff but the applicant-plaintiff had refused to accept the rent. This fact is uncontroverted. It was observed that these facts clearly indicated that the defendants were ready and willing to pay rent and were not willful defaulters.

3. In regard to the bonafide requirement, carefully examining the evidence and applying the well settled principle of law as to whether the need is genuine, honest and bonafide and in reality and not sham, the learned trial Judge observed that the applicant-plaintiff had merely stated that the premises where he was residing were not sufficient for his family. There were no specific details in regard to the need of the members of the family to reside in the suit premises. Learned trial Judge also observed that the entire contention of the applicant-plaintiff on the bonafide requirement had fallen to the ground in view of a statement made in the suit notice (Exhibit 33) issued by the applicant/plaintiff, in which he stated that

the suit premises are in dilapidated condition and are beyond repairs and that the applicant/plaintiff had also asked defendant not to make any repairs. It was observed that once such a position was taken, then, the applicant's case that there are large number of members in the family who would require premises to reside, was completely contradictory to the bonafide need being projected and could not be accepted. It was observed that the applicant had not produced any evidence to show as to how many members of the family were residing in his house. As also the applicant admitted in the cross examination that he had not produced any evidence to show that about 15 – 16 persons were residing in his house. The plea being only a paper plea, the learned trial Judge rejected this ground of eviction as asserted by the applicant/plaintiff.

4. On the issue of sub-letting by respondent no.1/defendant no.1, the allegation of the applicant/plaintiff was that the respondent no.1/defendant no.1, had unlawfully inducted respondent no.2/defendant no.2. The learned trial Judge on appropriate consideration of the evidence, observed that respondent no.2/defendant no.2 was residing in the suit premises alongwith defendant no.1 at least since 1981. The applicant/plaintiff had also admitted that he had not objected to the residence of respondent

no.2/defendant no.2 in the suit premises before issuance of suit notice (Exhibit 33). Considering the provisions of Section 13(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, it was observed that the suit to succeed on this ground, two basic ingredients were required to be proved, firstly that sub-tenant is in exclusive possession of the tenanted premises and the second ingredient being that the tenant was recovering compensation by way of money from the sub-tenant and is making profit. It was observed that the ration card of the defendants showed that defendant nos.1 and 2 were residing in the suit premises alongwith mother of defendant no.2 and other members of the family, which clearly showed that defendant no.2 was not exclusively in possession of the suit premises and in possession of the suit premises alongwith defendant no.1 as a family member. It was observed that even if it was assumed that defendant no.2 later on had come to reside at the suit premises, nevertheless he would not be a sub-tenant within the purview of Section 13(1)(a) of the Bombay Rent Act. The learned trial Judge rejected this ground considering the law as laid down in the decision of this Court in the case “*Vasant Mahadev Pandit Vs. Zaibunnisa*”¹ wherein it was held to be well settled that to make out a case of sub-letting the plaintiff has to establish that the party is in

1 2001(3) Mh.L.J. 118

exclusive possession of the suit premises upon payment of consideration for such purpose. The Court in paragraph 12 of the said decision had observed thus:-

“12. It is not unknown in our society that brothers and the wives of the deceased brother would come and stay in case of distress. It is also not unknown that relatives in distress would take shelter with their relations. The evidence adduced on behalf of defendants would clearly go to show that defendant no.2 was none else but the real brother of defendant No.1. Assuming that the suit premises were let out to defendant No.1 the fact remains that defendant 2 was using the suit premises only in the capacity of a family member of defendant No.1. After Laxman expired, his wife Sunanda impleaded defendant No. 2 continued to occupy the suit premises along with her mother-in-law Yashodabai i.e. mother of defendant No. 1. The evidence which has also come on record and not seriously challenged by the plaintiff is that the defendant No. 3 was the father-in-law of the real brother of defendant No. 1. In that sense he was also related to the defendant No. 1. Although, defendant No. 3 was not a blood relation, but generally he was closely related to the brother of defendant No. 1 and therefore can be said to be a family member. Obviously because of the close relation the defendant No. 3 was accommodated in the suit premises while in distress. The evidence adduced on behalf of defendants go to show that defendant No. 3 was compelled to shift in the suit premises due to threat of demolition of his accommodation which he was occupying at Thane. In other words, the evidence would unfailingly indicate that defendant Nos. 2 and 3 were occupying the suit premises only as the family members of defendant No. 1 and in no other capacity. If the premises are occupied by the family member, even if such member has joined the original tenant subsequently that by itself will not amount to creation of any sub-tenancy in his favour. Such interpretation cannot be countenanced at all, for even the Legislature in its wisdom has thought it appropriate to exclude family members from being licensee. If reference is made to the definition of licensee, it would be seen that a member of the family residing together with the tenant is expressly excluded from the definition of licensee. If the principle underlying this legislative intent is applied to the fact situation I have no hesitation to hold that even if a family member starts staying with the original tenant at a later stage that by itself will not attract the mischief of unlawful

sub-letting. Observations made by this Court in judgment in the case of **Babanrao Shankarrao Chauan v. Chandrashekhar Ramchandra Shinde,**' would be useful, which reads thus :

"9.

.... ..It is not unknown in our country that when a widowed sister comes to reside with her brother and when she starts residing with him *she resides not as a servant or a stranger, but resides as part and parcel of the family. This is the rule. There may be exceptions. "But if there are exceptions, the exceptions have got to be proved by special evidence. In the absence of any such evidence to the contrary, it must be assumed that a widowed sister who comes to stay with her brother along with her young one would be staying with him not as a stranger but as brother's family."* Likewise her younger son would be part of that very family." (emphasis supplied). "

The learned trial Judge held that there was not an iota of evidence which would show that defendant no.1 was receiving any compensation from defendant no.2 and was making profit. Further the applicant/plaintiff did not utter a word regarding payment of money by way of compensation by defendant no.2 to defendant no.1. It was observed that the evidence on record was thus wholly insufficient to accept that defendant no.2 is occupying the suit premises exclusively as sub-tenant of defendant no.1.

5. On the next issue of the respondents-defendants acquiring alternate accommodation, the learned trial Judge observed that there was no evidence on record that any alternate premises were acquired by defendant no.1 during subsistence of the tenancy. It was observed that there was no evidence on record to establish

that any alternative suitable accommodation was either acquired and/or was available for defendant no.2. It was observed that there was no evidence on record that alternative premises suitable to defendant no.1 was acquired by the defendant during the subsistence of the tenancy.

6. The above findings of the learned trial Judge on all counts came to be confirmed by the learned District Judge on examination of evidence in rejecting the appeal of the applicant-plaintiff.

7. Confronted with such a frail case of the applicant/plaintiff on facts, learned Counsel for the applicant/plaintiff in assailing the concurrent findings as recorded by both the courts against the plaintiff/applicant do not have many submissions. It is firstly submitted that the respondent/tenant was a defaulter and the onus was on the respondent/tenant to prove that defendant/tenant was not a defaulter. It is next submitted that the bonafide requirement of the applicant/plaintiff stood proved on evidence and the observations as made by the learned trial Judge as confirmed by the learned appellate Judge are required to be held as perverse. In support of the submissions, my attention is drawn to the observations as made by the learned trial Judge in paragraph 13 of

the judgment, to submit that the learned trial Judge has observed that the plaintiff does not make it clear as how he is going to reside in the suit premises which is beyond repairs. It is submitted that this observation could not have been made inasmuch as there is no obligation in law on the applicant/plaintiff to demonstrate as to how he is going to reside or make use of the suit premises, as it is well settled principle of law that the tenant cannot dictate to the landlord as to how he would use the premises. However, considering the weak factual foundation of the case, the learned Counsel intends to attack the impugned judgments needlessly relying on the decisions in the case of “*Chandiram Dariyanumal Ahuja Vs. Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola*”¹; decision of this Court in “*Central Bank of India Vs. Sunshine Sewing & Embroidery Class*”², judgments of the Supreme Court in the case “*Mrs.Meenal Eknath Kshirsagar Vs. M/s.Traders and Agencies & Anr.*”³; “*Mohd.Ayub & Anr. Vs. Mukesh Chand*”⁴; “*Raj Kumar Khaitan & Ors. Vs. Bibi Zubaida Khatun & Anr.*”⁵.

8. I have heard learned Counsel for the parties. With their assistance I have also gone through the judgments of the Courts below as also the compilation of the record of the suit.

1 2013(1) Mh.L.J. 28

2 Writ Petition No.5734 of 1995 decided on 11.10.2017.

3 AIR 1997 SC 59

4 Air 2012 SC 881

5 AIR 1995 SC 576

9. In regard to the findings of facts as recorded by both the Courts on the issue of arrears of rent, I am not persuaded to accept the contention as urged on behalf of the applicant. On the first contention of the respondents/tenants being defaulter, it is not in dispute that the respondent had deposited the entire amount before the trial Court which is in complete compliance of requirement of the Bombay Rent Act. Even otherwise the respondents were offering rent to the applicant-plaintiff but the applicant-plaintiff was not accepting the rent as observed by the learned trial Judge and accepted by the learned appellate Judge. This is an uncontroverted fact, as the payment was being offered by money orders. I do not find any infirmity in the observations of the Courts below on this count. Further learned counsel for the applicant is not in a position to point out as to what is the perversity on these findings qua the requirement of Section 12 of the Bombay Rent Act nor any case to that effect has been made out before the courts below.

10. As regards the issue of bonafide requirement, the case of the applicant-plaintiff as made out in the plaint that he has large family and there are fifteen members who are residing in the existing house and therefore it is insufficient to meet the requirement of growing family has been disbelieved by both the courts in totality.

Once the applicant/plaintiff had taken this as a specific ground to be a bonafide requirement, it was certainly required to be proved, failing which it becomes a sham ground and not a genuine requirement. Moreover, the applicant had admitted in the cross examination that he had not produced any evidence to show that about fifteen to sixteen persons were residing in his house. The learned trial Judge taking into consideration the evidence on record has come to a conclusion that the stand and the assertion of the applicant-plaintiff on bonafide requirement could not be proved by the applicant/plaintiff and in fact it has been contradictory. In the first place though an averment was made in paragraph 1A of the plaint in regard to the existing accommodation of the applicant-plaintiff being insufficient, however, to substantiate the same that the requirement is genuine and not sham no evidence whatsoever was brought on record by the applicant as to the actual number of persons who were residing in the existing premises and as to whether the premises are genuinely required for them. The contradiction was also that the applicant-plaintiff at the same time has stated that the suit premises are dilapidated and beyond repairs. In this context, the learned trial Judge observed that on one hand the applicant-plaintiff was saying that he requires the suit premises for his growing family

and on the other hand he says that the suit premises are not in habitable condition. Thus there was a clear inconsistency in the plea of the applicant/landlord, apart from this there was no evidence on record for the trial Court to accept the contention of the applicant on bonafide requirement. In my opinion, the contention of bonafide requirement was rightly held to be vague and weak and wholly insufficient for a Court to decree the applicant's suit on bonafide requirement.

11. As discussed above, though the applicant failed to prove before the trial Court that the bonafide requirement was genuine and not just a casual plea, the attempt on behalf of the petitioner is to wriggle out of this admitted factual scenario by relying on the decisions which lay down that the landlord is the best judge of his requirement and a tenant cannot decide the requirement of landlord. This proposition would be true but the application of this proposition would come into play only when the basic requirement is proved to be genuine and bonafide by the landlord. If the bonafide requirement is established by the landlord to be genuine and the tenant so confronted contends that such a plea be not accepted, in such a case it would amount to a tenant dictating the landlord, which is not

permissible. The decision as sought to be relied on behalf of the petitioner recognize this established position in law, however, in the facts of the case in view of the applicant/landlord having totally failed to prove and inspire any confidence of bonafide requirement as concurrently held by the courts below, the decision as relied on behalf of the applicant/plaintiff are not applicable.

12. Further on the issue of sub-letting, it has clearly come in evidence that the contention of the applicant-plaintiff that defendant no.1 had sublet the premises to defendant no.2 was also wholly untenable. As noted above it had clearly come on record that defendant no.2 was the member of the family and was residing alongwith defendant no.1 from the inception of the tenancy. Further there was no material whatsoever to show that respondent no.1 was receiving any rent from defendant no.2 so as to enable the Court to award decree on the ground of sub-letting under Section 13(1)(a) of the Bombay Rent Act.

13. On the issue of defendants having acquired alternate premises, there was no evidence whatsoever that during the subsistence of the tenancy any alternative premises have been

acquired by the defendants.

14. In the light of the above discussion, I find no material irregularity in the courts below exercising jurisdiction vested in them. In any event the Court in exercise of its jurisdiction under Section 113 of the Code of Civil Procedure would not re-appreciate evidence and reach to a different conclusion. The tenor of the arguments on behalf of the applicant/plaintiff in this direction cannot be accepted. I thus find no merit in the revision application. It is accordingly dismissed. No costs.

(G.S.Kulkarni,J.)