

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2930 OF 2018

Ramesh Baji Mhapade ... Petitioner
Vs.
Chandrakant Sitaram Chauhan ... Respondent

Mr. Parag M. Tilak for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JULY 19, 2018

P.C. :

Heard Mr. Tilak, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 31.12.2014 passed by the learned 2nd Joint Civil Judge, Senior Division, Thane in Regular Civil Suit No.677 of 2011 as also the judgment and decree dated 31.10.2017 passed by the learned Principal District Judge, Thane in Civil Appeal No.35 of 2015. By these orders, the Courts below have decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff' and directed the defendant to handover vacant and peaceful possession of room No.4 on the ground floor of Chavan Chawl situate at Gopal Baug, Opp. Shrirang Society, Anand Park, Thane (West) 400 601, more particularly described in paragraph 1 of the plaint (for short 'suit premises').

3. Plaintiff had instituted Suit inter alia contending that his joint family consists of 3 brothers and there are 15 family members. Plaintiffs are in possession of area admeasuring 440 sq.ft. The suit premises admeasures approximately 100 sq.ft. The plaintiff requires the suit premises for his family members' bonafide use. Plaintiff and his family

members are not financially sound to purchase new premises for the family members residence.

4. Defendant resisted the Suit by filing written statement. Defendant contended that plaintiff's financial condition is good. They are carrying on business. As against this, the financial condition of the defendant is not sound. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. Though the plaintiff had invoked ground of arrears of rent under Section 15 of the Act, the Courts below have not passed eviction decree on that ground. The Courts below have passed the decree only under Section 16(1)(g). The Courts below have also held that greater hardship will be caused to the plaintiff in the even of refusal to pass eviction decree. It is against these orders, defendant has instituted the present Petition.

5. In support of this Petition, Mr. Tilak strenuously contended that the requirement pleaded by the plaintiff is neither reasonable nor bonafide. Plaintiff has several other premises which will satisfy his need. He submitted that it has come on record that one of the brothers of the plaintiff, namely, Dipak owns a residential flat in Kondeshwar Apartment. It has also come on record that plaintiff is owner of Chavan Chawl. Thus, the need pleaded by the plaintiff is neither reasonable nor bona fide.

6. He further submitted that though the learned District Judge observed that two sons of the defendant are gainfully employed, this is factually incorrect and contrary to record. He submitted that only one of the sons of the defendant is doing work and the other son is not gainfully employed. The hardship of the plaintiff and defendant is equally poised. In such situation, the Courts below ought to have refused to pass eviction decree as greater hardship will be caused to the defendant. In

support of this submission, he relied upon decision of this Court in ***Laxman Shripati Yadav Vs. Dhirajrai Nanabhai Khatri, 1980 Bom. C. R. 769*** and in particular paragraph 17 thereof. The learned Single Judge of this Court observed that the landlord's ownership of the suit premises becomes relevant, in connection with his right to evict the tenant on the ground of his personal bona fide requirements only in two circumstances:

(a) When greater hardship will be caused to the landlord by not passing a decree in his favour than would be caused to the tenant, if eviction decree was passed against him.

(b) When the balance of hardship is equally poised. In no other case the landlord will be entitled to decree for eviction just because he is the owner of the suit premises. It follows that in every case when the tenant is likely to suffer greater and/or graver hardship, the factor of plaintiff's ownership of the suit premises loses all its relevance and must be relegated to the realm of provisional oblivion.

7. He submitted that in the instant case, the balance of hardship is equally poised between the plaintiff-landlord and the defendant-tenant. In view of the decision of this Court in ***Laxman Shripati Yadav (supra)***, the Courts below were not justified in holding that grater hardship will be caused to the plaintiff in the event of refusal to pass eviction decree. He, therefore, submitted that Petition requires consideration.

8. I have considered the submissions advanced by Mr. Tilak. I have also perused the material on record. As noted earlier, the Courts below have decreed the Suit only under Section 16(1)(g) of the Act. The learned trial Judge has considered ground of eviction under Section 16(1)(g) of the Act as also issue of comparative hardship from

paragraphs 23 to 28. In paragraph 23, the learned trial Judge dealt with the settled principle of law, namely, the landlord is the best judge of his residential requirement. It is for the landlord to establish whether his requirement is reasonable and bonafide. Growing family as also age growing children are also the elements to consider the aspect of bonafide requirement of the landlord. Once the landlord establishes that his requirement is reasonable and bonafide, in that case, onus shifts on the tenant to show that in the event of passing of eviction decree, he would suffer comparatively grater hardship than landlord.

9. In paragraph 24, the learned trial Judge noted that in paragraph 7, plaintiff has come with the case that his family is in occupation of 474 sq.ft., which is not sufficient to accommodate all 15 members of his family including himself, his brothers, their respective wives and children. As the defendant denied that there are 15 members in his family, the learned trial Judge proceeded to consider evidence adduced on record. In paragraph 25, the learned trial Judge referred to the area of 5 rooms, which are in possession of the plaintiff and his brother. After considering the evidence on record, the learned trial Judge observed that in one room, plaintiff is running his laundry business, and therefore, out of 5 rooms, only 4 rooms are available for residential purpose. Having regard to the dimension of 4 rooms and the members in the family of the plaintiff, it is difficult to hold that any of the rooms can meet the requirement of the family members of the plaintiff, either individually or collectively.

10. In paragraph 26, the learned trial Judge dealt with the submission of the defendant that plaintiff is owner of Chavan Chawl as also chawl at Gokuldas Wadi, Khopat, Thane. The learned trial Judge observed that no evidence is brought on record about availability of the premises in

these chawls. In paragraph 28, the learned trial Judge discussed the issue of comparative hardship. After considering the evidence of Ramesh-D.W.1, and in particular his cross-examination where he stated that he had not taken any efforts to find out alternate accommodation, the learned trial Judge held that greater hardship will be caused to the plaintiff than the defendant in the event of refusal to pass eviction decree.

11. In so far as the District Court is concerned, the learned District Judge has considered ground of reasonable and bonafide requirement and comparative hardship from paragraphs 13 to 17 and in paragraph 16, the learned District Judge noted that there are 15 members in the family of the plaintiff. In paragraph 5 of the written statement, defendant also admitted that plaintiff is having two brothers namely, Barlaram and Dipak. After considering the case pleaded by the defendant in the written statement, the learned District Judge observed that defendant admitted that there are 12 members in the plaintiff's family and that the landlord's family is quite sizable and from this point of view, a need of the plaintiff has to be considered. In paragraph 17, the learned District Judge also dealt with the submission of the defendant that plaintiff is owner of Chavan Chawl consisting of 12 rooms, and therefore, need of the plaintiff is neither reasonable nor bonafide. The learned District Judge observed that the rooms in Chavan Chawl are occupied by the tenants. The learned District Judge thereafter proceeded to consider the question of hardship. In paragraph 24, the learned District Judge observed that financial position of both sides is somewhat equal. In paragraph 25, the learned District Judge observed that tenant did not make any effort for searching alternate accommodation. After considering the evidence on record, the learned District Judge held that plaintiff has established his reasonable and bonafide need and that greater hardship will be caused to

the plaintiff in the event of refusal to pass eviction decree.

12. Mr. Tilak relied upon the decision of this Court in **Laxman Shripati Yadav** (*supra*). In that case, the learned trial Judge held that plaintiffs had established the requirement. However, it was held that greater hardship will be caused to the respondent-tenant by passing the decree for eviction. The learned trial Judge dismissed the Suit which also was filed invoking the ground under Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The plaintiffs preferred appeal. The learned District Judge held that plaintiffs established their requirement. He however, disagreed with the view of the learned trial Judge that more hardship will be caused to the tenant by passing decree for eviction. He however held that notice of termination of tenancy was not in compliance with the requirements of Section 106 of the Transfer of Property Act, 1882. In paragraph 23, this Court referred to the decision of *Mst. Bega Begum Vs. Abdul Ahad Khan*, **AIR 1979 SC 272** where it was found that the tenant could as well have purchased another accommodation. The Apex Court found that tenant had made no attempt in that behalf. The learned Single Judge observed that in the present case, the position is exactly reverse.

13. In my opinion, the said decision is not applicable in the present case as the Courts below have concurrently found that no attempt was made by the tenant to search for alternate accommodation. The reliance placed by Mr. Tilak on the decision of **Laxman Shripati Yadav** (*supra*), does not advance the case of the defendant. 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 Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

14. At this stage, Mr. Tilak orally applies for stay of the eviction decree for a period of 8 weeks from today. He assures that within two weeks from today, petitioner and all the adult family members will give usual undertaking incorporating therein that,

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interests nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interests nor part with possession of the suit premises;
- (d) they will clear arrears of rent, if any, by depositing the same in this Court within two weeks from today;
- (e) in case they are unable to obtain suitable orders from the higher Court within eight weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents.

15. In view thereof, dismissal of the Petition, subject to the petitioner filing undertaking in the aforesaid terms as also depositing arrears of rent in this Court within two weeks from today, eviction decree shall not be executed for the period of eight weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case defendants commit breach of any of the conditions of the undertaking, respondent will be at liberty to proceed with the matter in accordance with law. In case, defendant is unable to obtain suitable orders from higher Court within a period of

eight weeks and does not hand over possession of the suit premises to the plaintiff, interim order shall stand vacated without further reference to the Court and the respondent-plaintiff will be at liberty to proceed with the matter in accordance with law. Office shall transmit copy of this order to the respondent-plaintiff. Order accordingly.

16. List the Petition for 'reporting compliance' on 09.08.2018.

(R. G. KETKAR, J.)

Minal Parab

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by Minal Sandip
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