

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3751 OF 2001

Shankar Chango Pachpande,
since deceased through his
legal heirs:

1. Smt. Kamalbai W/o Shankar Pachpande,
Age: 72 years, Occu: Household work
2. Shri Surendra Shankar Pachpande,
Age: 51 years, Occu: Service,
R/o: "Suramga" Building,
Block No.8, Gurukul Co-operative Housing
Society, Thane-2.
3. Shri Vijay Shankar Pachpande,
Age: 51 years, Occu: Service,
4. Shri Prakash Shankar Pachpande,
Age: 40 years, Occu: Service,
R/o. "Shapayo", Block No.6,
Pandurang Wadi, Behind Modern
English High School, Dombiwali
(East), District Thane.
5. Shri Balkrishna Shankar Pachpande,
Age: 40 years, Occu: Service,
For Nos. 1, 3 and 5 R/o. New Area Ward,
near Pandurang Talkies, Bhusawal.
6. Sau. Shilpa Nilkanth Nemade,
Age: 35 years, Occu: Household,
R/o. Rajdhan Building, Shivaji peth,
No.2, behind 52 Chawal,
Thakirli (West), District: Thane.
7. Sau. Jyoti Dilip Sarode,
Age: 33 years, Occu: Household,
R/o. Thane, As stated Above for 6.

..Petitioners

Versus

Sau. Kamalabai W/o Dagadu Chaudhari,
Age: 58 years, Occ. Household,
R/o. near Pandurang Talkies, Bhusawal,
District: Jalgaon.

..Respondent

...
Mr. R.S. Shinde, Advocate for Petitioners.
Mr. Swapnil S. Patil, Advocate for Respondent.

...
CORAM : P.R. BORA, J.
DATE : 15th APRIL, 2019.

ORAL JUDGMENT:-

1. The decree of eviction passed in R.C.S. No.272 of 1988 by the Court of Civil Judge, Junior Division, Bhusawal on 26.09.1995, which has been confirmed by the District Judge Jalgaon in R.C.A. No.233 of 1995 decided on 18.07.2001 is challenged by the tenant in the present writ petition.

2. One Shri Shankar Chango Pachpande was the tenant in Municipal House No.2506 situated at Bhusawal. He was inducted as a tenant in the said house by the then owner of the said house namely Sau. Pushpalata Vishwanath Mahajan. The said house was purchased by Sau. Kamalabai W/o. Dagadu Chaudhari in the year 1986 with the tenant in the said house. The said Kamalabai filed the suit in the year

1988 seeking decree of eviction against the tenant namely Shri Shankar Chango Pachpande on the ground of default in payment of rent and the bonafide requirement. Certain other grounds were also raised against the tenant for vacation of the suit premises. It was alleged that the tenant has not been using the suit house for residential purpose for more than six months preceding to the date of filing of the suit. Arrears of rent were also claimed along with decree of possession.

3. The suit was resisted by the tenant on various grounds. The material on record shows that the tenant had already filed an application for fixation of the standard rent. It was also the contention of the tenant that the landlady was not having any need of the suit premises since, she was having in her possession other suitable accommodations. It was also contended that the need of the suit premises as was posed by the landlady was false and the greater hardship was liable to be caused to the tenant in the event of passing of eviction decree. The tenant had also denied that he was in arrears of rent.

4. In order to substantiate the grounds raised in the suit, the landlady deposed before the Trial Court. The tenant

also deposed to prove the defense raised by him. The learned Trial Court after having assessed the oral and documentary evidence on record before him, decreed the suit and directed the defendant-tenant to vacate the suit premises and hand over the peaceful possession of the suit property to the plaintiff-landlady within one month of the date of the order. The tenant filed an appeal in the District Court bearing Civil Appeal No.233 of 1995 challenging the decree of eviction passed by the Trial Court. The learned District Judge dismissed the said appeal vide the impugned judgment and order passed on 18.07.2001. Aggrieved by the aforesaid two judgments, the tenant has preferred the present writ petition. It has to be stated that in the meanwhile, the original tenant namely Shankar Chango Pachpande died and his legal heirs have prosecuted the matter further.

5. Shri R.S. Shinde, the learned counsel appearing for the petitioners assailed the judgments delivered by the courts below on various grounds. The learned counsel submitted that though sufficient evidence was brought on record showing that landlady was having other suitable accommodation and suit premises were not required by her, the courts below have erred in recording a conclusion that

the landlady was bonafide requiring the suit premises for her own use. The learned counsel further submitted that the courts below have also failed in appreciating that the greater hardship was liable to be caused to the petitioner-tenant in the event, the eviction decree is passed. The learned counsel submitted that the suit house was purchased by the landlady along with the tenant. The learned counsel further submitted that had the landlady been really in need of any accommodation for her own residence, she would not have purchased the suit house wherein the petitioner was residing as a tenant. The learned counsel submitted that the courts below however, have failed in appreciating the said aspect. The learned counsel further contended that the decree passed for arrears of rent is also unsustainable and deserves to be set aside since, the landlady has failed in proving that the petitioner was in arrears of rent. The learned counsel, in the circumstances, prayed for setting aside the eviction decree passed by the Trial Court and confirmed by the District Court.

6. Shri Swapnil Patil, the learned counsel appearing for the respondent supported the judgments delivered by the courts below. The learned counsel submitted that after

having considered the evidence on record, the decree of eviction was passed by the Trial Court and which has been rightly confirmed by the District Court. The learned counsel, in the circumstances, prayed for dismissal of the writ petition.

7. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have perused the judgments delivered by the courts below and the evidence brought on record during course of the trial of the suit. On perusal of the evidence of record, it does not appear to me that any case is made out by the petitioner, so as to cause any interference in the decree of eviction passed by the Trial Court which has been confirmed by the District Court.

8. As has been observed by the learned District Judge in Para-54 of the impugned judgment, the fact that the landlady Kamalabai and her husband are staying in the rented premises has not been denied or disputed by the petitioner-tenant. It was the specific contention of the landlady Kamalabai throughout that, she purchased the suit house for her own residence. The tenant has failed in bringing on record any material to disprove the contention of the landlady that she is in bonafide need of the suit

premises for her own residence. It was sought to be contended on behalf of the tenant that, there were other houses owned by the landlady but they were given on rent by her. It was the contention of the petitioner-tenant that had the landlady in need of accommodation for her own residence, she would not have let out the said houses on rent. The contention so raised has been negatived by the courts below observing that the landlady Kamalabai had served notices to all the three tenants which was indicative of her need of the suit premises for her own residence.

9. The material on record shows that the issue of comparative hardship has been appropriately dealt with by both the courts. As has come on record, tenant Shankar has specifically admitted in his cross-examination that after receipt of notice of eviction, neither he nor his sons made any attempt to search the alternate accommodation. Tenant Shankar had further admitted that he did not do so as because he was not intending to vacate the suit premises. Having considered the admission given by the tenant, it is evident that there is no merit in the contention raised by the tenant that alternate accommodations are not available and the greater hardship will be therefore to the tenant if he is called upon to vacate the suit premises. As has been

observed by the District Judge in Para-62 of the judgment, a suggestion was given to tenant Shankar in his cross-examination that several constructions of houses were under progress on Jamner road and that accommodation for him in the said area was easily available. Tenant Shankar did not deny the suggestion so given but pleaded ignorance about the fact so suggested to him.

10. After having considered the entire evidence on record, it is revealed that the landlady has satisfactorily proved that she is in bonafide need of the suit premises. As against it, the tenant has failed in bringing on record that no alternate accommodation is available in the vicinity of the suit premises. In the circumstances, it does not appear to me that the courts below have committed any error in passing the decree of eviction. No such material is brought on record by the petitioner-tenant so as to take any contrary view. The petition, being without any merit deserves to be dismissed and is accordingly dismissed.

11. At this juncture, a request is made by Shri Shinde, the learned counsel appearing for the petitioners to stay the execution of decree of eviction for next two months so that the petitioner can approach the Hon'ble Apex Court.

In view of the fact that the landlady has sufficiently proved her bonafide need of the suit premises and no contrary material is brought on record by the petitioner-tenant, I am not inclined to grant the request so made. The request, therefore, stands rejected.

(P.R. BORA, J.)

Mujaheed//