

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition NO. 7281 OF 2019**

Munawar Baig Shabbir Baig

...Petitioner

*Versus*

Iftekhar Sardar Baig  
and others

...Respondents

....

Mr. Sanket Mungle, Advocate for the Petitioner.

Mr. S.J. Chaurasia i/b. Ashoka Law Firm, for Respondents No.1 & 2.

....

CORAM : R. G. KETKAR, J.

DATE : 02<sup>nd</sup> JULY, 2019

P.C.

1. Heard Mr. Sanket Mungle, learned counsel for the petitioner and Mr.S.J. Chaurasia, learned counsel for respondents No.1 & 2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the order dated 31.1.2018 passed by the learned Judge, Court Room No.21 of the Small Causes Court at Mumbai below Exhibit-8 in R.A.D. Suit No.293/2017 as also the order dated 4.5.2019 passed by the Appellate Bench of the Small Causes Court in Misc. Appeal No.65/2018. By these orders, the Courts below rejected the application made by the plaintiff praying for injunction restraining respondents No.1 & 2, hereinafter referred to as 'defendants No.1 & 2' from

obtaining possession of new residential premises in the reconstructed building in lieu of the premises i.e. Rooms No.58 and 59, 3<sup>rd</sup> floor, Noorani Manzil, House No.5-F, Second Navroji Hill Road, situate in C.S. No.82/1721 of Mandvi Division, Mumbai – 400 009 (for short, 'suit premises'); for injunction restraining respondent No.3, hereinafter referred to as 'defendant No.3' from handing over possession of the new constructed residential premises in the reconstructed building to defendants No.1 & 2 in lieu of the suit premises.

3. The plaintiff came with the case that the tenancy of the suit premises originally stood in the name of Shabir Nazir Baig. Shabir Baig died on 26.5.1958 leaving behind three sons and two daughters including the plaintiff and Sardar Baig. The plaintiff was born on 24.1.1949. Defendant No.1 is the son of Sardar Baig. Defendant No.2 is the wife of defendant No.1. The plaintiff contended that at the time of death of Shabir Baig, the plaintiff along with his two brothers and two sisters was residing in the suit premises. In view of Section 7(15)(d) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'), all the family members residing at the time of death of tenant Shabir Baig inherited tenancy rights. The plaintiff, at relevant time, was working in shipping as a Seamen. He was getting wages from Shipping Corporation of India Ltd., Mumbai. The address of the plaintiff is shown of the suit premises. The plaintiff further contended that Noorani Building where the suit

premises is situate is taken up for redevelopment under Regulation 33(7) of the Development Control Regulations for Greater Mumbai, 1991 without the plaintiff's knowledge, consent and permission as also without permission of other brothers and sisters. The Maharashtra Housing Area and Development Authority (for short, 'MHADA') certified that defendants No.1 & 2 are the tenants of the suit premises. Defendant No.1 entered into an agreement of permanent accommodation in new building in lieu of room No.59 and another agreement of permanent accommodation in new building in lieu of room No.58 in the name of defendant No.2. Defendant No.1 is receiving monthly compensation for transit accommodation @ Rs.17,000/- per month in respect of room No.58 and defendant No.2 is receiving Rs.7,000/- per month in lieu of room No.59 from the date of execution of agreement for permanent accommodation dated 27.7.2009. The plaintiff came with the case that the plaintiff along with his two brothers and sisters are equally entitled to tenancy rights in respect of the suit premises and the alleged claim of defendants No.1 & 2 as tenants in respect of the suit premises is illegal. All the transactions entered by defendants No.1 & 2 with defendant No.3 and others are illegal, null and void and not binding on the plaintiff.

4. The plaintiff accordingly instituted suit for declaration that he is a statutory monthly tenant under Section 7(15)(d) of the Act in

respect of the suit premises; for declaration that the tenancies of the suit premises standing in the name of defendants No.1 & 2 are illegal, void and bad in law and not binding on the plaintiff; for issuing mandatory injunction directing defendant No.3 to get the rent receipt transferred in the name of deceased tenant Shabir Nazir Baig; for perpetual injunction restraining defendants No.1 & 2 from obtaining possession of new residential premises in a constructed building in lieu of the suit premises; for perpetual injunction restraining defendant No.3 from handing over possession of newly constructed residential premises in the reconstructed building in lieu of the suit premises.

5. During pendency of these suits, the plaintiff took out interim notice at Exhibit-8 *inter alia* praying for injunction as aforesaid. Defendant No.1 filed reply at Exhibit-21. Defendant No.3 filed reply at Exhibit-15. After considering the material on record, the learned trial Judge rejected the application. Aggrieved by that order, the plaintiff preferred Misc. Appeal before the Appellate Court. By order dated 4.5.2019, the Appellate Court dismissed the Appeal. It is against these orders, the plaintiff has instituted present petition.

6. In support of this Petition, Mr.Mungle reiterated the submissions that were advanced before the Courts below. He submitted that it is not in dispute that Shabir Baig was the tenant of the suit premises. It is also not in dispute that the plaintiff was born on

24.1.1949. Shabir Baig died on 26.5.1958 leaving behind three sons and two daughters including the plaintiff. All the heirs and legal representatives of Shabir Baig were residing in the suit premises at the time of death of Shabir Baig. In view of Section 7(15)(d) of the Act, after the death of Shabir Baig, the tenancy rights devolved upon all the family members residing with him at the time of his death. In support of this submission, he relied upon following decisions :

- (i) **Gian Devi Anand Vs. Jeevan Kumar, (1985) 2 SCC 683;**
- (ii) **Mini Peter Philips Vs. Dina J.S. Fanibanda, (2007) 4 Bom CR 526.**

7. Mr. Mungle submitted that merely because the plaintiff was out of India on account of his service, it cannot be said that his tenancy rights are extinguished and that defendants No.1 & 2 became tenants to the exclusion of other members of the family of original tenant Shabir Baig.

8. On the other hand, Mr.Chaurasia supported the impugned orders. He submitted that defendants No.1 & 2 have handed over possession of the suit premises to defendant No.3. They also entered into agreement with defendant No.3. Consent decree was passed in R.A.D. Suit No.1118/2007. He submitted that room No.59 was separately purchased by defendant No.1. Since 1968 rent receipt in respect of room No.58 is standing in the name of Sardar Baig, father of defendant No.1. He, therefore, submitted that no case is made out for

interfering with the impugned orders.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that Shabir Baig was the tenant of room No.58. On one hand, the plaintiff claims that Shabir Baig was a tenant even in respect of room No.59, defendants No.1 & 2 claim otherwise. The Courts below after considering the material on record have rejected the application. In particular, in paragraph-12, the Appellate Court noted that it is not in dispute that tenancy of both the premises i.e. rooms No.58 and 59 are in the name of the deceased Sardar Baig, father of defendant No.1. It is also admitted that earlier landlord conveyed Noorani building including the suit premises to defendant No.3 who entered into development agreement with various tenants including defendants No.1 & 2. It is also not in dispute that R.A.D. Suit No.1118/2007 for declaration was disposed of in terms of the consent terms.

10. The Appellate Court also noted that the claim of the plaintiff that he was residing at the time of his father in the suit premises. Defendants No.1 & 2 are not disputing the factum that deceased Shabir Baig was a tenant of room No.58. They, however, contended that Shabir Baig was not tenant of room No.59 at any point of time. Sardar Baig father of defendant No.1 himself purchased room No.59 out of his own

sources of income. The Appellate Court referred to various documents relied by defendants No.1 & 2 in support of this contention.

11. In paragraph-14, the Appellate Court noted that though the plaintiff claimed that his father Shabir Baig was tenant of room No.59, he did not produce any document to substantiate this claim. Though defendants No.1 & 2 claimed that rent receipt of room No.58 was transferred in the name of Sardar Baig in the year 1956 i.e. even prior to the death of original tenant Shabir Baig, they had not produced any document to substantiate this. However, they filed rent receipts of room No.58 of February, 1968 and March, 2002 showing that the rent receipt stood in the name of Sardar Baig. The Appellate Court, therefore, observed that rent receipts of rooms No.58 and 59 were transferred in the name of Sardar Baig in the year 1968 and since then the rent receipts have been continuously issued in the name of Sardar Baig. The Appellate Court further observed that the contention of the plaintiff that though he is continuously residing in the suit premises, he was unaware of such transfer receipts, cannot be accepted.

12. In paragraph-21, the Appellate Court held that the trial Court erroneously observed that the tenancy came to an end after demolition of the suit premises.

13. After considering the material on record, the Courts below concurrently held that the plaintiff has not made out a *prima facie* case,

balance of convenience does not lie in his favour and that irreparable injury will not be caused to the plaintiff in case injunction is refused.

14. Mr. Mungle relied upon the decision in **Gian Devi Anand** (supra). In that case, the question that fell for consideration was whether the heirs of a deceased tenant, whose contractual tenancy in respect of commercial premises has been determined, are entitled to the same protection against eviction afforded by the Act to the tenant. The Apex Court held that the distinction between the contractual tenant and the statutory tenant is obliterated. In my opinion, said decision is not applicable to the facts of the present case.

15. Insofar as the decision in **Mini Peter Philips** (supra) is concerned, in paragraph-42 reference to the decision of **Zahid Ahmedali Mazgaonwalla Vs. Smt.Gulshan Pyarali Mazgaonwalla** , **2006 (4) Bom.C.R. 481** was made. The suit was decided after a full fledged trial. In that decision, it was held that all the family members residing in the suit premises with the tenant at the time of his death became entitled to the statutory right as joint tenants. Consequently, an heir, who was specifically disinherited under a Will, was also held to be a joint tenant with other members of his family and transfer of tenancy by another member of the tenant (who was his widow) to her daughter was held bad. It was held that mere rent receipts in the name of the family member will not deprive the other of joint tenancy rights. In my

opinion, this decision is also not applicable to the facts of the present case as the Courts below were considering interlocutory application for injunction.

16. In the case of **Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727**, the Apex Court in paragraph 14 has observed as under:

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. ....”

17. Applying the tests laid down by the Apex Court in **Wander Limited's** case (supra) to the facts of the present case, it cannot be said that the Courts below exercised the discretion arbitrarily or capriciously or perversely or that the Courts below had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. This

Court will not reassess the material and seek to reach a conclusion different from the one reached by the courts below if the one reached by that courts below is reasonably possible on the material. This Court would normally not be justified in interfering with the exercise of discretion solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the courts below reasonably and in a judicial manner the fact that this Court would have taken a different view may not justify interference with the exercise of discretion by the Courts below. Hence, Petition fails and the same is dismissed.

18. It is, however, made clear that in case the plaintiff succeeds in the suit, subject to the right of defendants No.1 & 2 to challenge the order, defendants No.1 & 2 will abide by the outcome of the Suit. During pendency of the suit, after obtaining possession of new residential premises in the reconstructed building, defendants No.1 & 2 will neither create third party interest nor part with the possession thereof and will abide by the outcome of the suit. Order accordingly.

(R. G. KETKAR, J.)