

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3450/2018

Dinkar Balkrushna Ranade Vs. Bhagwandas Bhaichand Lohana

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A.V.Bhide, Advocate for petitioner.

Shri M.G.Bhangde, Advocate with Shri Mayank Agnihotri, Advocate for
respondent sole.

CORAM : A.S.CHANDURKAR, J.

DATED : August 16, 2019.

In the light of notice for final disposal issued earlier, the learned
counsel for the parties have been heard at length.

The petitioner is the original plaintiff who is aggrieved by the
dismissal of the suit for eviction as filed under the provisions of Section
16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'the said
Act') as confirmed by the appellate Court.

The facts in brief are that it is the case of the petitioner that the
shop admeasuring 15 feet x 9 feet has been let out to the respondent herein
on rent of Rs.500/- per month. The petitioner claims to have purchased the
building in question on 30.12.1985. The petitioner had initiated proceedings
for seeking permission to issue quit notice under the provisions of C. P. &
Berar Letting of Premises and Rent Control Order, 1949 (for short, 'the Rent
Control Order'). The permission as granted by the Rent Controller was
confirmed by this Court in Letters Patent Appeal No.137/1994. The Special
Leave Petition filed thereafter was also dismissed. Since the petitioner
sought possession on account of his bonafide need, he issued a notice dated
06.06.2008 which was actually dispatched on 16.06.2008 to the respondent.

The tenancy was accordingly terminated. According to him, initially Small Cause Suit No.44/2006 had been filed seeking eviction on the ground of arrears of rent. However that suit was amended and the relief with regard to the prayer for possession was given up and arrears of rent was sought. The present suit was accordingly filed on 05.02.2009.

In the written statement the claim as made was denied. It was stated that the petitioner had various properties and his need was not bonafide. The respondent claimed that he was regular in paying the amount of rent. The notice dated 06.06.2008 was disputed. On these counts it was stated that the suit was liable to be dismissed.

The plaintiff examined himself at Exhibit 22 while the defendant did not lead any evidence. The trial Court on considering the evidence on record found that the pleadings and the evidence did not indicate the bonafide need of the plaintiff. On that count, the suit came to be dismissed. The appellate Court re-appreciated the evidence on record and confirmed the findings recorded by the trial Court. The appeal was accordingly dismissed on 12.12.2017. Being aggrieved, the original plaintiff has filed the present writ petition challenging the said order.

Shri A.V.Bhide, learned counsel for the petitioner submitted that both the Courts committed an error in requiring the petitioner to prove his bonafide need ignoring the fact that in the proceedings filed initially under the provisions of the Rent Control Order, it has been held that the petitioner was entitled to issue quit notice to the respondent. Further the tenancy had been validly determined on that basis and the suit came to be filed. Merely because it was stated in the cause title of the plaint that the suit was filed under the provisions of Section 16(1)(g) of the said Act would not be a reason to hold against the petitioner. Wrongly quoting those provisions did not indicate that the suit was filed ignoring the permission granted to issue the quit notice. On the same ground, it was not necessary to frame the issue as to whether the petitioner had made out a case for eviction on account of

his bonafide need. Those aspects had been adjudicated earlier. He then submitted that the Courts committed an error in holding that the plaintiff had not proved his bonafide need. The respondent in fact had not entered the witness box. The aspect of hardship was also not brought on record by the respondent. Certain admissions that were referred to by the Courts have been considered in the wrong perspective thereby causing prejudice to the case of the petitioner. It was therefore submitted that the impugned orders were liable to be set aside and the suit for eviction was liable to be decreed. In support of his submissions, the learned counsel placed reliance on the following decisions :

1. Rafiq Ahmed Qureshi s/o Bashir Ahmed Vs. Iqbal Khan s/o Hashmat Ali Khan and others, 2012(1) Mh.L.J.337.
2. Vilaschand s/o Deochand Khedikar (Jain) (deceased) by L.Rs.Sujot s/o Vilaschand Khedikar(Jain) and anr. Vs. Bhimchand s/o Pannasao Jain, 2011(4) Mh.L.J.864
3. Challamane Huccha Gowda Vs. M.R.Tirumala and anr., (2004) 1 SCC 453.
4. Tantulal Biharilal Parwar Vs. Purushottam Shankarram Purohit, 1981 Mh.L.J. 981.
5. P.Ratnam(Tenant) Vs. vimalchandra (Landlord), 1973 Mh L.J. 72.
6. Shri Ramnanlal Kantilal Doshi Vs. Shri Lalchand Hemraj Nahar & Anr. 2009 (2) ALL M R 41.
7. Virendra Laxmikant Dube Vs. Nandashram Lodge and another, 2019(3) ABR 455.
8. S.Venugopal Vs. K.Karruppusami and anr. (2006) 4 SCC 507.

Shri M.G.Bhangde, learned Senior Advocate for the respondent supported the impugned judgment. According to him, the Courts had rightly proceeded to adjudicate the proceedings under the provisions of Section 16(1)(g) of the said Act. In his deposition, the petitioner had clearly stated that the suit had been filed under Section 16(1)(g) of the said. When the trial court framed the issues the petitioner did not raise any objection to

the issues pertaining to his bonafide need and likelihood of hardship being caused to him being framed. On the contrary the petitioner proceeded to lead his evidence in the light of the issues as framed. It was further submitted that by admitting the portions marked 'A' and 'B' in the plaint to be incorrect, the aforesaid aspect was fortified. Though it was open for the petitioner to rely upon the permission granted to him to issue quit notice, the petitioner chose to proceed against the tenant under the provisions of Section 16(1)(g) of the said Act. The finding as regards absence of bonafide need was a finding based on the evidence on record. Both the Courts had concurrently come to the finding that the need of the plaintiff had not been proved. It would not be permissible to re-appreciate the entire evidence in writ jurisdiction. It was thus submitted in the light of the material on record that there was no reason to interfere with the impugned judgments. The writ petition was therefore liable to be rejected.

I have heard the learned counsel for the parties and I have also perused the documents on record. It is not in dispute that the petitioner purchased the suit property in the year 1985. He thereafter had initiated proceedings for seeking permission to issue quit notice to the tenant on the ground that he had bonafide need of the said premises. In those proceedings the Rent Controller on 08.07.1989 had rejected the said application. That order was confirmed by the Resident Deputy Collector while dismissing the appeal. Thereafter the writ petition filed by the petitioner came to be dismissed by the learned Single Judge. However the Letters Patent Appeal filed by the petitioner was allowed on 15.06.2006 and the permission was granted to the petitioner to issue quit notice under the provisions of Clause 13(3)(vi) of the Rent Control Order. The Special Leave Petition filed by the respondent had been dismissed. The petitioner thereafter on 06.06.2008 sought to issue notice to the respondent demanding possession of the suit property after terminating his tenancy. The said notice was dispatched on 16.06.2008 and the tenancy was terminated from the midnight of 31.12.2008. The petitioner had thereafter

filed Small Cause Suit No.44/2006 to seek possession of the suit property. In that suit however the petitioner did not further prosecute the relief with regard to possession and pursued the said proceedings only in respect of arrears of rent. Thereafter on 27.02.2008, the petitioner issued another notice for terminating tenancy. A reply was given on 02.06.2008 by the respondent. It is thereafter that the present suit being Small Cause No.5/2009 came to be filed on 05.02.2009. In the plaint, it has been stated that the possession was sought under the provisions of Section 16(1)(g) of the said Act.

There is a contentious issue as to whether the petitioner sought eviction of the respondent by relying upon the permission that was granted under Clause 13(3)(vi) of the Rent Control Order or whether eviction was sought by relying upon the provisions of Section 16(1)(g) of the said Act. If the cross-examination of the petitioner is perused, he has clearly stated that the present proceedings were initiated under the provisions of Section 16(1)(g) of the said Act. He has further admitted that in the earlier suit which was Small Cause Suit No.44/2006, he had given up the relief which was sought for eviction of the respondent. He has further admitted in his cross-examination that the portions marked 'A' and 'B' in the plaint were incorrect. Portion marked 'A' relates to issuance of notice dated 06.06.2008 while portion marked 'B' states that the notice dated 06.06.2008 was sent on 16.06.2008. In view of the clear admissions of the petitioner himself that the present proceedings were initiated under the provisions of Section 16(1)(g) of the said Act and no objection being raised to the framing of issue regarding his bonafide need being proved, both the Courts were justified in examining as to whether the petitioner had made out a case for evicting the respondent on the ground that he had bonafide need of the suit premises. Though it was submitted on behalf of the petitioner that the plaintiff as a layman could not be credited with having knowledge of legal niceties, considering the nature of his deposition it is not possible to accept that contention. In the light of the fact that the petitioner had initially filed

Small Cause Suit No.44/2006 and had given up the relief insofar as the possession was sought coupled with own admission of the petitioner that the present proceedings had been filed under Section 16(1)(g) of the said Act, the finding recorded by both the Courts on that aspect does not deserve to be interfered with.

As regards the petitioner having bonafide need of the suit premises which is a shop admeasuring 15 feet X 9 feet, it is seen that in his cross-examination the petitioner had admitted availability of various premises wherein business is being conducted by him and his family. Various small establishments being run by the petitioner were admitted by him in his cross-examination besides stating that when he was cross-examined, he had not decided as to the purpose for which the suit premises were to be used by him. The appellate Court after re-considering the evidence on record has affirmed the findings recorded by the trial Court. This conclusion recorded by both the Courts is based on the evidence available on record and the finding in that regard cannot be stated to be perverse. It has been further held that hardship was not likely to be caused to the petitioner if a decree for eviction was not passed. In the light of the material on record it therefore cannot be said that the petitioner had made out a case for eviction of the respondent on the ground of bonafide need.

Insofar as the decisions relied upon by the learned counsel for the petitioner are concerned, there can be no quarrel with the law as laid down therein. However when the facts of the present case are taken into consideration, it is seen that the ratio of those decisions cannot be made applicable to the case in hand. The finding as regards absence of bonafide need is a finding of fact and both the Courts having recorded the said finding in the light of evidence on record, the same does not call for any interference.

In that view of the matter, it is found that both the Courts did did not commit any jurisdictional error while recording the finding that the

petitioner had failed to prove his bonafide need. There is no reason to interfere with the impugned judgments. The writ petition is therefore dismissed with no orders as to costs.

JUDGE

Andurkar.