

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 902 OF 2018**

**NARCINVA PANDHARINATH NAGVENKAR
(DEC) THR. LRS.,**

... Petitioner

Versus

**ANJALIBAI BHASKAR MHAPSEKAR (DEC)
THR. HER LRS.,**

... Respondent

Adv. J. P. Mulgaonkar with Adv. Ms. Rupa Banaulikar for the Petitioner.
Adv. Usgaonkar Sudesh Manohar Usgaonkar with Adv. Ms. Maria R.
Pereira for Respondent no.1a

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 22nd January 2020.

Oral Order:

Facts:

The petitioners are the tenants and the respondents are the owners of the property. The petitioners' predecessor let out the property to the petitioner's predecessor for residential purpose. Later, the owner died. His wife took out eviction proceedings in Case No.BLDG/5/ARC-11/1989. She sued for the recovery of the leased property on the grounds of bona fide requirement and change of user.

2. Pending the trial the landlady and the original tenant, too, died. The legal representatives were brought on record on either side. The Rent Controller under the Goa, Daman and Diu Building (Lease, Rent and Eviction) Control Act, 1968 ("the Rent Control Act"), dismissed the suit,

through Judgment, dated 6th February 2003. Aggrieved, the respondents filed an appeal; it was initially before the Administrative Tribunal. But because of the amendment to the Rent Control Act, the Appeal was transferred to the District Court of South Goa, numbered as Rent Appeal No.9/2013. Eventually, through Judgment, dated 21st February 2018, the appellate Court has allowed the eviction application. Thus, faced with the eviction, the tenants have filed this writ petition under Article 227 of the Constitution of India.

3. Shri Jagannath Jayant Mulgaonkar, the learned counsel for the petitioners, has submitted that the Rent Controller has found the comparative hardship in the tenants' favour. As to the change of user, the authority has also found, according Shri Mulgaonkar, that the dominant use of the leased property has continued to be residential. He has stressed that there was no occasion for the appellate Court to disturb those findings. In this context he has drawn my attention to Sections 23 (3) and 25 of the Rent Control Act.

4. To elaborate on the comparative hardship, Shri Mulgaonkar has argued that by passage of time, among the owners, the landlady, who initiated the proceedings died. Later, her daughter got married and left the matrimonial home. Then, only two sons remained. Of these two sons, one son got married but the other son, too, died. Therefore, the surviving son with his family requires no additional accommodation.

5. On the factual front, Shri Mulgaonkar has also pointed out that a portion of the house collapsed. If at all the owners wanted additional accommodation, they could have reconstructed the collapsed part. But they did nothing. According to him, the owners' deliberate inaction to reconstruct the collapsed portion of the house only testifies to the fact that they did not need any additional accommodation.

6. Finally, on the question of change of user, Shri Mulgaonkar points out that as rightly held by the Rent Controller, the tenants still live in the house. Thus, there is no change of user.

Respondents:

7. On the other hand, Shri Sudesh Manohar Usgaonkar, the learned counsel for the respondents, has submitted that the appellate Court has rendered its findings essentially on the questions of fact. And this Court may not interfere with those findings of fact, especially, by exercising its supervisory jurisdiction under Article 227 of the Constitution of India. He has also contended that even amongst the tenants, the original tenant died leaving behind only four daughters. Those four daughters got married except one. Even on that count, the comparative hardship has always leaned in the owner's favour.

8. Eventually, Shri Usgaonkar has contended that the Rent Controller has not ruled that the dominant user continues to be residential. On the contrary, it took the tenants' carrying on the business as consented to by the owners. Though the law requires written consent in this regard, the Rent

Controller has erred in concluding that the owners have impliedly consented to the tenants' business on the house. So the appellate Court has rightly interfered with that erroneous finding.

9. Heard.

10. Indeed, the Rent Controller has answered the issues on *bona fide* requirements and the comparative hardship in the tenants' favour. Besides, he has also found that the tenants carried on their goldsmith business in the residential building with the owners' implied consent. Then, the appellate Court has reversed both the findings.

11. As rightly contented by the owners, both the findings are findings of fact, and this Court's revisional remit is limited. True, the tenants contend that the appellate Court's findings are perverse, affecting the interest of justice. Are they?

12. After going through the judgment of the appellant's Court, I reckon it has been well reasoned. It has considered all the subsequent developments and weighed the comparative hardship, though, on subjective scales. It is not for me to substitute my own opinion merely on the premise that it may be more plausible. The first appellate Court is the Court of law as well as fact. It is well within its jurisdiction to interfere with even the findings of fact rendered by the Rent Controller. And it did the same.

13. In sum, the appellate Court's judgment, on my perusal, reveals no perversity of findings. It has appreciated the rival contentions and the evidence and has concluded on both the issues in the owners' favour.

14. We may note that the litigation began in 1989, and it is time the dispute attained quietus.

Under these circumstances, I fail to persuade myself to upset, what I reckon, the appellate Court's well-reasoned judgment on the facts. I, accordingly, dismiss the writ petition. No order on costs.

DAMA SESHADRI NAIDU, J.

ap/-