

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

Writ Petition No.6253 of 2016
Anil Dattatray Ambalkar Vs. Nirmala Gopichand Jibhakate

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.A. Chawhan, Advocate for the petitioner
Mr. D.G. Paunikar, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : JANUARY 16, 2020

By this Writ Petition, the petitioner has challenged judgment and order dated 30th July, 2016, passed by the Court of District Judge-17, Nagpur (Appellate Court), whereby an appeal filed by the respondent has been allowed and the petitioner has been directed to deliver the vacant possession of the suit premises to the respondent herein.

2. The respondent had filed a suit for ejectment, possession and arrears of rent against the petitioner before the Small Causes Court, under the provisions of the Maharashtra Rent Control Act, 1999. It is contended on behalf of the respondent that the petitioner was in arrears of rent and that she bonafide required the suit shop block in possession of the petitioner, as business was being carried out by the respondent in the adjacent shop block and her business was flourishing day by day and that she required the

suit shop block as it would be convenient to her for increasing the business. It was contended that her daughter was assisting her in business and her daughter was qualified to run a Beauty Parlour and if the suit shop block was handed over to the respondent, it would be of use for her daughter also.

3. The petitioner denied the claims pertaining to arrears of rent and bonafide need raised on behalf of the respondent. The Small Causes Court, on the basis of oral and documentary evidence on record, came to a conclusion that case for arrears of rent was not made out by the respondent. It was found that in so far as the suit for arrears of rent was concerned, it did not satisfy the requirement of Section 15 of the Act. In so far as bonafide need was concerned, the Small Causes Court came to a conclusion that the respondent had failed to make out a case in her favour because the daughter of the respondent who was said to have been assisting her in her business had admittedly got married during pendency of the proceedings. It was found that even the aspect of comparative hardship was in favour of the petitioner. On this basis, the suit filed by the respondent was dismissed by the Small Causes Court.

4. Aggrieved by the same, the respondent filed appeal under the provisions of the said Act before the Appellate Court. By the impugned judgment and order,

the Appellate Court found that the respondent was entitled to grant of decree of possession in her favour on the ground of bonafide need under Section 16(1) (g) of the aforesaid Act. It was found that the findings on bonafide need as well as comparative hardship rendered by the Small Causes Court were erroneous and accordingly, the order of the Small Causes Court was set aside and the appeal was allowed.

5. On the present writ petition being filed by the petitioner (original tenant), this Court issued notice for final disposal on 24th October, 2016 and in the meantime protected the possession of the petitioner in the suit shop block.

6. Learned counsel appearing for the petitioner submitted that the findings rendered by the Appellate Court were erroneous. It was brought to the notice of this Court that the daughter getting married and its effect on the case of bonafide need raised by the respondent was not appreciated in the correct perspective by the Appellate Court. It was further pointed out that the said daughter had now unfortunately expired and this had a bearing on the case of bonafide need projected by the respondent. It was further claimed that the findings on the question of bonafide need and comparative hardship given by the Small Causes Court were justified on the basis of record. On this basis, it was claimed that the writ petition deserved to be allowed.

7. On the other hand, the learned counsel appearing for the respondent submitted that although admittedly the said daughter had expired, but further submitted that the said fact would have no bearing on the findings rendered by the Appellate Court.

8. Attention of this Court was invited to specific admissions given by the petitioner in his cross-examination and it was submitted that the Appellate Court had rendered cogent findings based on proper appreciation of evidence on record. On this basis, it was submitted that the writ petition deserved to be dismissed.

9. Heard learned counsel for rival parties and perused the material on record. It needs to be examined whether the Appellate Court was justified in reversing the judgment of the Trial Court and coming to the conclusion that case for eviction of the petitioner on the ground of bonafide need was made out. In order to examine as to whether the findings rendered by the Appellate Court were justified, it would be appropriate to peruse the pleadings and evidence on record. In the suit filed before the Small Causes Court, it was specifically stated on behalf of the respondent that out of five shop blocks that were owned by the respondent, two were already in possession of their sons, who were having their independent business. It was also stated that relationship between the

respondent and her two sons was not cordial. It was further stated that out of remaining three shop blocks, one was in her possession while other two shop blocks were in possession of tenants, one of which was in possession of the petitioner herein. It was specifically pleaded that after the death of her husband, the respondent had taken up the business that was being run by her deceased husband and since the business had flourished the respondent required adjacent shop block, which was in possession of the petitioner. It was pleaded that her daughter was assisting her in the business and it was further pleaded that the said daughter was qualified to run Beauty Parlour and that acquisition of the adjacent shop in possession of the petitioner could help the said daughter to set up the business of Beauty Parlour. The respondent led oral and documentary evidence in support of the said case pertaining to bonafide need projected on her behalf.

10. The petitioner denied the said claim on behalf of the respondent and it was contended that since during pendency of the proceedings, the said daughter had got married, the whole basis of bonafide need projected on behalf of the respondent had been taken away. It was further submitted that the petitioner would suffer greater hardship if he is evicted from the premises because he was running his shop of tailoring in the suit premises and that his entire family depended on him.

11. As noted above, the Trial Court accepted the contention raised on behalf of the petitioner and placed much emphasis on the fact that the daughter of the respondent was married and, therefore, bonafide need pleaded on behalf of the respondent was not made out.

12. On the other hand, the Appellate Court considered the entire pleadings and material on record. A perusal of the impugned judgment and order shows that from paragraphs 25 to 28, the Appellate Court took into consideration the nature of evidence on record, particularly the crucial admissions given by the petitioner in cross-examination before the Small Causes.

13. The Appellate Court found that not only did the respondent refer to the fact that her daughter was assisting in her business but she was also qualified to open Beauty Parlour. It was specifically pleaded and evidence was led on her behalf to show that the business she was running in the only shop in her possession was flourishing every day and, therefore, adjoining shop block in possession of the petitioner was bonafide required for extension of her business. The Appellate Court has considered the cross-examination of the petitioner in this context.

14. A perusal of the material on record shows

that the petitioner himself conceded to the fact that the respondent was running business from the shop block in her possession and that the business had been flourishing day by day. It was also considered that shop block in possession of the respondent was only 15 X 8 ft. and that if the wall between the said shop block and shop block in possession of the respondent was removed, sufficient space would be available to the petitioner for effectively carrying out business. It was also conceded by the petitioner in cross-examination that he had made no effort to search for an alternative premises for carrying out his own business.

15. In the face of such specific admissions given by the petitioner in cross-examination, it could not be said that the Appellate Court committed any error by holding that the case for bonafide need was made out by the respondent and that the suit for eviction deserved to be decreed. The findings rendered by the Appellate Court on the aspect of expanding business of the respondent herself cannot be said to be erroneous and in the face of such findings the fact regarding marriage of her daughter and later her unfortunate death pale into insignificance. The findings on comparative hardship given by the Appellate Court can also not be said to be erroneous.

16. In view of above, this Court finds that the petitioner has failed to make out any case on merits in

the present writ petition and that the impugned judgment and order passed by the Appellate Court does not deserve any interference.

17. Accordingly, the writ petition is dismissed.

JUDGE

MP Deshpande