

Aura

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No. 848 of 2018

Mrs. Louisa Fernandes,
Wife of J. V. Fernandes, Major, Married,
Residing at Villa J. L. F. Peres Da Silva,
Corlim, Mapusa, Bardez-Goa,
(Since deceased) by her Legal heir
Mr. Agnelo John Bosco Savio Fernandes,
Major of age, Service, presently residing at
Villa J. L. F. Peres Da Silva,
Opp. Hotel Mahalaxmi,
Khorlim, Mapusa, Goa.

Petitioner

Versus

1. Ashok Tukaram Naik Salgaonkar,
Residing at Housing Board Colony,
Mapusa, Goa.
2. Kishor Tukaram Naik Salgaonkar,
Residing at Housing Board Colony,
Mapusa, Goa.

Respondents

Mr. J. P. Mulgaonkar, Senior Advocate with Ms. Rupa Banaulikar, Advocate for the Petitioner
Mr. A. D. Bhobe, with Ms. Annelise Fernandes, Advocates, for the Respondent no.1.
Mr. S. Dhargalkar with Mr. Tucaram Gawas, Advocates for Respondent no.2.

CORAM: MANISH PITALE, J
DATED: 7th September, 2021

Oral Order ;

1. By this Writ Petition, the petitioner has challenged concurrent orders passed by the two Courts below whereby the petitioner has been directed to vacate the suit premises and hand over vacant possession to the respondents.

2. The present respondents purchased the suit house property on 3/2/1997, during the pendency of the proceedings before the Court of Civil Judge Junior Division at Mapusa (hereinafter referred to as the trial Court). The predecessor in title of the respondents had filed Rent Application No.61/2013/E (Old Rent Case No.132 of 1982) before the Trial Court against the petitioner seeking her eviction on two grounds specified under the Goa, Daman and Diu Building (Lease, Rent and Eviction) Control Act, 1968. Eviction was sought under section 22 (2) (b) on the ground that the petitioner had sublet the suit house without the consent of the landlord and under section 22(2)(f) on the ground that the petitioner had ceased to occupy the suit house for a continuous period of four months without reasonable cause. The petitioner resisted the said application filed by the predecessor in title of the respondents and claimed that the persons in possession of the suit house were her spinster sisters and that there was no question of subletting in the present case. The claim of the landlord that the petitioner had ceased to occupy the suit house without reasonable cause for a period of four months was also denied.

3. The predecessor in title of the respondents led evidence by examining witnesses in support of their case, while it is an

admitted position that the petitioner did not lead any evidence. On the basis of the oral and documentary evidence on record, the trial Court found that a case for eviction of the petitioner was made out. On the basis of the evidence on record, the trial Court concluded that both the grounds of eviction were proved. Reference was made to the oral evidence of the witnesses who had deposed in support of the case of the predecessor of the respondents and reference was also made to a Power of Attorney executed by the petitioner, which indicated that she had left the suit premises and had gone to England in the year 1979. The documentary evidence was also considered and by Judgement and order dated 15/10/2014, the trial Court granted the application and directed the petitioner to vacate the suit premises. It is relevant that when the said Judgment and order was passed by the trial Court, the respondents had already come on record, since they had purchased the suit property on 3/2/1997 from the original applicants.

4. Aggrieved by the said Judgment and order of the trial Court, the petitioner filed Appeal bearing No. Rent Appeal No.11 of 2014 before the Court of District Judge-1 Mapusa (hereinafter referred to as the Appellate Court.)

5. By Judgment and Order dated 19/1/2018, the Appellate Court dismissed the appeal and confirmed the findings rendered by the trial Court in favour of the respondents.

6. Mr. J. P. Mulgaonkar, learned Senior Counsel appearing for the petitioner submitted that a perusal of the application filed on behalf of the original applicants under the provisions of the said

Act would show that the pleadings were deficient in order to prove the aforesaid grounds of eviction under section 22(2)(b) and (f) of the said Act. He submitted that general and vague statements were made in paragraph 8 of the application, which demonstrated that the foundational facts for raising such grounds of eviction were not stated in the application. By inviting attention of this Court to the findings rendered by the appellate Court, the learned Senior Counsel submitted that much emphasis was erroneously placed on the said Power of Attorney executed by the petitioner. It was submitted that the said document, at the most, indicated that the petitioner had left for England in order to be with her husband who was sick and that there was nothing on record to indicate that she had ceased to occupy the tenanted premises. It was further submitted that the original applicant had relied upon three letters issued in the months of June, July and August 1982, which were addressed to the petitioner, but they were returned to the sender with the endorsement “addressee left”. It was submitted that merely because these three letters were returned in the aforesaid fashion, it could not be said that the requirement of section 22(2)(f) of the said Act was satisfied, to show continuous absence of the petitioner from the suit premises for a period of four months. In so far as the ground under section 22(2)(b) pertaining to subletting is concerned, it was submitted that in the written statement itself the petitioner had pleaded that she was staying in the tenanted premises along with her spinster sisters from the very beginning and therefore, it could not be said that she had inducted such persons in the tenanted premises without consent of the landlord. The learned Senior Counsel placed reliance on the Judgment of the Hon'ble Supreme Court in the case of **A. Mahalakshmi Vs. Bala Venkatram (dead)**

through Legal Representatives and anr., (2020) 2 Supreme Court Case 531.

7. On the other hand, Mr. A. D. Bhobe, the learned counsel appearing for respondent no.1 and Mr. S. Dhargalkar, the learned counsel appearing for the respondent no.2, both submitted that in the first place, other than filing the written statement, there was no evidence led on behalf of the petitioner before the trial Court. It was further submitted that the witnesses who had deposed in support of the application filed before the trial Court, sufficiently proved the two grounds of eviction. In addition, the learned counsel referred to the oral evidence of the witnesses and emphasis was placed on the said Power of Attorney, which clearly indicated that the petitioner had left the suit premises in 1979 to join her family in England. On this basis it was submitted that there was no substance in the grounds raised in the present writ petition. Attention of this Court was also invited to the definition of “member of the family” as specifically defined in section 2(k) of the aforesaid Act. It was submitted that sisters are not included as members of the family and, therefore, this was a clear case of subletting on the part of the petitioner.

8. Heard Mr. Mulgaonkar, the learned Senior Counsel for the petitioner and Mr. Bhobe, the learned counsel appearing for the respondent no.1 and Mr. Dhargalkar, the learned counsel appearing for the respondent no.2. Perused the material on record.

9. This Court has perused the application filed by the petitioner seeking eviction of the petitioner on the twin grounds

mentioned above under section 22 (2) (b) and (f) of the aforesaid Act. In the application, the original applicants (predecessor of the respondents) had clearly stated that after they purchased the suit property in 1980, they had sent letters to the petitioner informing her that she was required to attorn the tenancy. It was then stated that these letters dated 19/6/1982, 2/7/1982 and 2/8/1982 sent to the petitioner were returned with the endorsement “addressee left, return to sender”. It was thereafter pleaded that the petitioner had ceased to occupy the suit premises for a period of four months without reasonable cause and that she had sublet the premises without the consent of the landlord. A perusal of the application shows that the pleadings necessary to raise the aforesaid twin grounds for eviction were indeed stated in the application. The petitioner in the written statement did assert that she along with her spinster sisters had occupied the suit premises, but it is an admitted position that no evidence was led on behalf of the petitioner before the trial Court.

10. On the other hand, the original applicants led evidence of four witnesses in support of their case. The aforesaid Power of Attorney dated 8/6/1979 also came on record, wherein it was clearly stated that the petitioner was executing the Power of Attorney for the reason that she intended to join her husband in England and to stay out of Goa. Such oral and documentary evidence was sufficient to indicate that the petitioner had ceased to occupy the tenanted premises. One of the witnesses was a fair price shop owner, who supported the statements made on behalf of the original applicants as regards continuous cessation of occupation of the suit premises by the petitioner for a continuous period of more than four months. Although it was contended

that the petitioner was required to go to England to attend to her husband who was sick and, therefore, there was reasonable cause for ceasing to occupy the tenanted property for four months, no evidence was led on behalf of the petitioner in support of such contention. The evidence led on behalf of the original applicants has virtually gone unchallenged in the present case.

11. In so far as the question of subletting is concerned, although it was claimed that the sisters of the petitioner were residing in the suit premises since the very beginning, in the absence of any evidence to support the same, such a contention cannot be accepted. As rightly pointed out, section 2(k) of the said Act defines “member of the family” which admittedly does not include sister. Therefore, sufficient material was on record to indicate that in the present case the ground under section 22 (2) (b) was also made out. In so far as the judgment in the case of **A. Mahalakshmi Vs. Bala Venkatram(supra)** is concerned, there can be no quarrel with the proposition that the burden would be on the landlord to show that there was a case of subletting by showing that the third party was in exclusive possession of the tenanted premises. In the present case, the original applicants had brought on record evidence to show that the persons who claimed to be the spinster sisters of the petitioner were in possession of the suit premises and that the petitioner herself had ceased to occupy the said premises. Therefore, the said Judgment cannot be of any assistance to the petitioner.

12. In view of the above, it is found that the petition is without any merit and it deserves to be dismissed. Accordingly, the Writ Petition is dismissed.

MANISH PITALE, J.

MARIA
AURA
PEREIRA

Digitally signed
by MARIA AURA
PEREIRA
Date: 2021.09.08
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