

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

WRIT PETITION NO.2921 OF 2009

Mohanlal Baluram Tank
(deceased) through LRs
Kailash s/o Mohanlal Tank
Aged about 60 years, Occ: Business,
R/o Dagdi Pul Chowk, Akola, Tahsil and
District Akola

...PETITIONER
(Orig. Plaintiff)

---VERSUS---

Sandeep Uphargrah,
Proprietor – Babulal Mahadeo Shahu,
Occupation – Hotel, R/o Dagdipul Chowk,
Akola, Tahsil and Dist. Akola

...RESPONDENT
(Orig. Defendant)

Shri B.N. Mohta, Advocate for the petitioner.
Shri P.M. Chandekar, Advocate for respondent.

CORAM : AMIT BORKAR, J.
DATED : JULY 25, 2022.

ORAL JUDGMENT :

1. Petitioner filed a suit on the grounds of *bonafide* requirement and rent arrears. The requirement pleaded is for the petitioner's son, Kailash, to start a hardware business. The suit shop admeasures 10 X 12 feet. According to plaintiff, the suit shop is adjacent to the house where they are residing. According to the plaintiff, the relationship between Kailash and other family members is not cordial, leading to day-by-day friction, which

causes mental disturbance to plaintiff in old age. Though during the pendency of the suit, a decree passed against Yawalkar Pesticides, he filed an appeal and secured a stay.

2. Tenant opposed the suit by filing a written statement that the remaining half portion of the suit plot is open, wherein plaintiff can construct to carry on his son's business. There are two shop premises and two big rooms constructed on the ground floor of the plot where suit shop is situated. Four big rooms are also available with plaintiff on the first floor of the said building. Therefore, Kailash can start his business on the vacant premises available to plaintiff. On the date of filing of a written statement, Kailash was aged about 45 years and was settled in life. It is stated that plaintiff owns 19 acres of agricultural land, and he possesses three storage buildings at Akot/near the motor stand. By amending the written statement, it is stated that plaintiff has a decree of eviction against Yawalkar Pesticides on 17.11.2005, which is adjacent to the suit premises. Regarding hardship, it is pleaded that the business in the suit premises is defendant's only income source.

3. In support of his case, the plaintiff cross-examined himself and two witnesses, including Kailash. Defendant

examined himself. The trial Court, after considering the evidence on record, decreed the suit holding plaintiff reasonably and *bonafide* requires suit premises. The issue of hardship was held in favour of plaintiff.

4. Tenant challenged the decree by filing Regular Civil Appeal No.45 of 2007. The learned Principal District Judge, Akola, by impugned judgment and order, set aside the decree and upset the finding of *bonafide* requirement. The Appellate Court set it aside for the following reasons:

- i. Glaring admission by plaintiff and the witnesses indicate that plaintiff's need is not bonafide and reasonable.
- ii. Kailash is doing business in the supply of construction material, and at the age of 77 years, it would not be possible for any person to look after his business.
- iii. Neither Mahoanlal nor Kailash has stated in their evidence that Kailash will start his business by stopping earlier business.

5. Landlord has, therefore, filed the present petition. I have heard both Advocates appearing for the parties.

6. Learned Advocate for petitioner submitted that the

reasons given by the Appellate Court to upset the finding of facts of bonafide requirement recorded in favour of plaintiff are perverse. According to him, the Court cannot dictate landlord as to how he should carry on his business. According to him, it is now well settled that the landlord is the best judge of his own requirement. According to him, the premises on the first floor, which according to defendant, are sufficient to start a hardware business, are not suitable. He submitted that petitioner's family uses the said area for cooking. According to him, the premises, possession of which has been received during the pendency of present proceedings, were for the benefits of another son Gajendra. Therefore, it is not relevant for deciding the present petition.

7. *Per contra*, learned Advocate for respondent submitted that two vacant rooms on the back side of the suit shop can be utilized for the requirement. Additionally, there is an open plot over it plaintiff can construct and satisfy his requirement. According to him, another building is at a distance of 0.5 km from the suit premises; plaintiff has 7 rooms in possession. He submitted that plaintiff had received possession adjoining shop, which could be utilized for the need of Kailash. He submitted that defendant has been carrying on restaurant business at suit for

more than 40 years and has acquired goodwill over the said business. Therefore, he submitted that tenant would suffer greater hardship.

8. Having reflected on the submission, in my opinion, the Appellate Court was not justified in interfering with the finding of *bonafide* requirement by the trial Court. It is now a well-settled principle of law that the Court cannot dictate to the landlord as to how he should carry on his business. The landlord is the best judge of his own requirements. The two rooms on the backside of the suit shop, which according to defendant, can be utilized to start a business of Kailash concerned, said rooms are on the backside of the suit premises. The suit premises is on the main road. The commercial place on the main road has a definite advantage which premises on the backside of the main road do not have. According to plaintiff, two rooms were used to store agricultural produce. According to plaintiff, the said rooms cannot be utilized for commercial purposes as the said area cannot be converted into shops. Therefore, defendant needed to place on record evidence to show that two rooms on the backside of the suit shop are suitable for conducting hardware business as pleaded in the plaint. In the absence of such evidence, the material brought on the record by plaintiff is sufficient to show that there

are no other suitable vacant premises in possession of plaintiff to carry on the hardware business.

9. Insofar as the shop adjoining suit shop received during the pendency of this proceeding is concerned, it was acquired to start the business of Gajendra (brother of Kailash). According to plaintiff, the said shop is also used to store articles. According to defendant, the said shop is kept vacant. It is defendant's submission that plaintiff's witness has admitted in his cross-examination that Gajendra does not want to carry on business and is mainly interested in carrying on his agricultural work. Once it is established that the possession of the adjoining shop has been received by landlord for the bonafide need of Gajendra, at this stage, it is not proper to conclude that Gajendra will not carry on the business as pleaded in the suit. It is well settled that if the possession of premises is obtained on the ground of bonafide need is not utilized for the said purpose; the tenant has a remedy under the Rent Control legislation. However, defendant in the present case cannot urge that the said premises can be used for the need of Kailash.

10. Insofar as seven rooms in possession of the plaintiff in the nearby building are concerned, the rooms are undisputedly on

the first floor. Moreover, plaintiff has stated that the rooms are used for residential purposes, particularly cooking.

11. It is well settled that tenant cannot dictate landlord to shift or carry-on business on the first floor when landlord does not find it suitable to carry on the business on the first floor.

12. On an overall consideration of the facts of the case, I am satisfied that plaintiff has proved his *bonafide* need to start a hardware business for his son Kailash. The Appellate Court, while disbelieving the case, recorded the finding that a person of 77 years old is not expected to carry on the business. In my opinion, the finding is perverse. It is not for the Court to record such a finding without supporting material to that effect. Merely because a person on the date of confirmation of decree attains the age of 77 years that cannot operate as a disqualification for getting a decree of possession on the ground of *bonafide* need. Insofar as a hardship to be caused to defendant is concerned, it is now well settled that once tenant receives suit notice, tenant has to search for alternative premises. Defendant has adduced no evidence to show that after receipt of the notice, he has searched for alternative premises, and no premises are available in the area. In the absence of such evidence, it cannot be accepted that tenant

would suffer greater hardship if the decree for possession is passed.

13. Insofar as the contention regarding the hall on the first floor on the suit shop is concerned, in my opinion, the said factor is not relevant to dis-entitle the landlord to seek possession of the suit shop on the ground floor as observed above. The suit premises on the main road has a definite commercial advantage which first floor premises do not have. Therefore, merely because premises on the first floor are available, landlord's need cannot be termed as not *bonafide*.

14. The open premises adjacent to the suit shop is concerned; the Court cannot force landlord to construct over the open area and use it for his business.

15. As a result, plaintiff is entitled to a decree based on the *bona fide* requirement under Section 16(1)(g) of the Maharashtra Rent Control Act. Therefore, Rule is made absolute in terms of prayer clauses (2)(i) and (ii), which read as under:

“(2)(i) to quash and set aside the judgment and order dated 24th February 2009 passed by the Principal District Judge, Akola, in R.C.A. No.45/2007 between Sandeep Uphargraha Vs Mohanlal (Annexure-H) and to dismiss the said R.C.A. No.45/2007;

(ii) to restore the judgment and decree dated 02.02.2007 passed by the Joint Civil Judge, Junior Division, Akola, in Small Causes Case No.62/2003 between Mohanlal Vs. Sandeep Uphargraha (Annexure-F), with cost throughout in favour of the petitioner and against the respondent;."

16. At this stage, the learned Advocate for the tenant seeks stay to the decree. The Advocate for the plaintiff opposes the same.

17. Since defendant has been in possession of the suit property for the last 40 years, some reasonable time must be given to the respondent. The effect and operation of the present judgment is stayed for eight weeks subject to the condition that respondent shall not part with possession or create the third party right in the suit premises.

18. Petitioner/plaintiff shall be entitled to *mesne* profits under Order XX Rule 12 of the Code of Civil Procedure from the date of passing of decree by the trial Court.

Pending civil application (s), if any, stand disposed of.

JUDGE