

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

WRIT PETITION NO.4815 OF 2013

1. Sanjay s/o Avinashchander Kapoor
Aged about 52 years, Occ: Business,
R/o E-7, Ashok Vihar, Phase -I, New Delhi.
2. Rajesh s/o Tilakraj Kapoor,
Aged about 47 years, Occ: Business,
R/o F-23, Ashok Vihar, Phase-I, New
Delhi. Through Power of Attorney Holder
Sayyad Hasan Abbas

...PETITIONERS
(orig. Plaintiffs)

---VERSUS---

1. M/s. Gandhi Electricals,
A Partnership Firm through Partners
2. Vinod s/o Vitthalrao Wath,
Aged about 63 years,
3. Ashok s/o Vitthalrao Wath,
Aged about 58 years,
R/o Dayawandi Niwas, NIT Plot No.2,
Ganjakheth Chowk, Gandhibagh, Nagpur
4. Vilas s/o Vitthalrao Wath,
Aged about 53 years,

...(orig. Defendants)

Respondent nos.2 and 4 are the partners
of respondent no.1 – firm having its place
of business in shop block no.1, on the
ground floor of the building known as
'Dayawanti Niwas', NIT Plot no.2,
Ganjakheth Chowk, Gandhibagh, Nagpur

5. Court of Ad Hoc District Judge-4, Nagpur. **...RESPONDENTS**

Shri R.M. Sharma, Advocate for the petitioners.

Shri S.P. Dharmadhikar, Senior Advocate a/b Shri C.S. Dharmadhikari,
Advocate for respondent nos.1 to 4.
Shri M.A. Kadu, AGP for respondent no.5.

CORAM : AMIT B. BORKAR, J.
Reserved on : JULY 12, 2022.
Pronounced on: JULY 27, 2022.

JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the parties.

2. A suit for ejectment filed by the plaintiff/petitioner seeking ejectment of the defendants/respondents from the suit premises, used for business, on the ground available under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 having been dismissed by the Courts below; the present writ petition has been filed.

3. The petitioners filed the suit for possession of 200 sq.ft. on the ground floor of a building consisting of a mezzanine floor and first floor purchased by the petitioners on 24.08.2001. The requirement pleaded by the petitioner in the plaint is about 500 to 600 sq.ft. for starting a transport business. It is pleaded that there are 8 to 10 employees of petitioners and area of 500 to 600 sq.ft. is required for their staff, visitors, who visit taking delivery of their goods or for booking their consignments. It is pleaded that though the petitioners have possession of a godown and premises on the

first floor, the suit premises face the main road and is on the ground floor; therefore, it is suitable for their business of transport. The petitioners are running their business in the rented premises, and the landlord of the said premises has initiated eviction proceedings against the petitioners.

4. The respondents have filed a written statement stating that the petitioners have in their possession vacant area on the first floor of the building, admeasuring about 1800 to 2100 sq.ft., which can be used for establishing a transport office. Therefore, the shop of respondents has goodwill, and the respondents would suffer greater hardship if the decree is passed against the respondents. The respondents also raised objections about non-compliance with Order VII Rule 15 of the Code of Civil Procedure ('CPC'). By amending the written statement, it is stated that the petitioners have started using the mezzanine floor and open to sky portion of the open plot adjoining to the suit premises for transport business.

5. Petitioner no.1 examined himself and also PW2 (Power of Attorney). Respondent no.2 entered the witness box on behalf of the respondents. The respondents examined Civil Engineer to prove the nature of the suit building. The trial Court dismissed the suit by recording a finding that the petitioners have suppressed

the material fact that there is a mezzanine floor in the suit building and have started using the mezzanine and first floor for their business. It is also held that the petitioners are using open space on the ground floor by putting plastic-sheet which satisfy the petitioners' need. It is held that the respondents have no place to carrying-on their business, and therefore they would suffer greater hardship.

6. The petitioners challenged the decree by filing an appeal before the Appellate Court. The Appellate Court dismissed the appeal holding that non-compliance with Order VI Rule 15 of the CPC, “sufficient vacant premises in the form of 200 sq.ft. godown on Eastern side, 600 sq.ft. area on the mezzanine floor and 1800 sq.ft. area on the first floor satisfy the need of the petitioners. It is also held that in the case of the decree, respondents would suffer greater hardship. The petitioners have therefore filed the present petition.

7. Shri Sharma, learned Advocate for the petitioner/plaintiff, has vehemently submitted that gross injustice has been done to them because the Courts below have misconstrued the concept of bona fide requirement. He submitted that the petitioners' business is undisputedly in rented premises on the ground floor. He submitted that although the petitioners have

started their business on the first floor during the pendency of the proceedings, the said fact by itself is not sufficient to dismiss the suit of petitioners on the ground of bona fide requirement. He submitted that it is not for the Courts below to say that the landlord should shift first or higher floors. He submitted that the landlord could not be compelled to carrying-on business on the rented premises. He submitted that the bona fide need of the landlord for additional premises has to be determined by the Court by applying the objective standard. He submitted that suit premises on the ground floor is more suitable advantages for the petitioners to carry on their business. He submitted that during the pendency of proceedings, the petitioners offered premises on the mezzanine floor and the first floor to respondent no.1. However, they refused to shift themselves to the mezzanine floor or first floor. He submitted that Order VI Rule 15 of the CPC is a directory. He placed reliance upon the judgments of the Apex Court on the following cases:

All India Reporter Ltd. Bombay with Branch Office at Nagpur and another Vs. Ramchandra Dhondo Datar¹, Premprakash Hukumatray Sethi Vs. Smt. Vandana Bhalchandra Altekar², Balwant P. Doshi Vs. Shantaben Dhirajlal Shah and

¹ AIR 1961 Bom 292

² 2002(2) RCJ 123

another¹, Dhannalal Vs. Kalawatibai and others², Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and others³, Vidyawati Gupta and others Vs. Bhakti Hari Nayak and others⁴, Pushkar Singh Vs. Ansuiya⁵, and Uday Shankar Upadhyay and others Vs. Naveen Maheshwari⁶.

8. *Per contra*, Shri S.P. Dharmadhikari learned Senior Advocate submitted that the requirement pleaded by the petitioners is 500 to 600 sq.ft.. He submitted that godown admeasuring 200 sq.ft. is in possession of plaintiff which is being used for storing goods for transport business. He submitted that the petitioners are in possession of 800 sq.ft. residential premises on the first floor. He submitted that the sanctioned plan of the building is not produced to prove the residential premises cannot be used for transport business. He submitted that Section 30 of the Maharashtra Rent Control Act could not be pressed in service to disentitle petitioners from using residential premises for transport business. He submitted that both the Courts below, after appreciation of evidence on record, have recorded a concurrent finding of fact disbelieving bona fide need of the petitioners. He submitted that the finding of fact recorded by the Courts below

1 2002 (4) Mh.L.J. 473

2 (2002) 6 SCC 16

3 (2005) 8 SCC 252

4 (2006) 2 SCC 777

5 (2006) 6 SCC 799

6 (2010) 1 SCC 503

could not be termed as perverse. Therefore, he relied on the Apex Court's judgment in the case of **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil**¹.

9. I have considered the rival submissions of learned counsel for the parties and perused the record.

10. In **Prativadevi Vs. TV Krishnan**² 1996 (5) SCC 353, the Apex Court has held that the landlord is the best judge of his requirement, and the Courts have no concern to dictate the landlord as to how and in what manner he should live.

11. In **Dhannalal Vs. Kalavatibai and others**³ the Apex Court was considering the case of *bona fide* requirement of a landlord who was having a shop on the first floor the filing of suit for ground floor premises. The Apex Court held that a landlord cannot be compelled to carry on business on rented premises. The proved requirement cannot be defeated by the tenant submitting that the landlord can start or comfortably continue to run his business in rented premises. In the facts of the said case, the landlord had secured some premises in the locality at a short distance from suit premises on the first floor of the building. The Apex Court held that to amount to an alternative non-residential

1 (2010) 8 SCC 329

2 (1996) 5 SCC 353

3 (2002) 6 SCC 16

accommodation so as to defeat the requirement of the landlord for the suit premises, it should be reasonably suitable non-residential accommodation, and it should be suitable in all respects as suit accommodation. The Apex Court held that the bona fide need of the landlord for the premises or the additional premises have to be determined by the Court by applying the objective standard. It is held that the accommodation on the first floor cannot be considered a suitable alternative accommodation compared with the shop on the ground floor.

12. In **Uday Shankar Upadhyay and others Vs. Naveen Maheshwari**¹, again the Apex Court was considering the suitability of alternative accommodation on the first floor held by the landlord. In the said context, in paragraph 7, the Apex Court observed as under:

“7. In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The Court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of plaintiff 1 should do business on the first floor in the hall which is

¹ (2010) 1 SCC 503

being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained. As regards the finding that the sons of Plaintiff 1 are getting a salary of ₹1500 from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court."

13. In the case of **Pushkar Singh Vs. Ansuiya**¹The Apex Court was considering a case of alternative accommodation available with the landlord, which was offered to the tenant and rejected by the tenant. In that context, the Apex Court, in paragraph 10, observed as under:

"10. In this Court, the learned counsel for the appellant-landlord stated that the alternative accommodation at Harijan Basti in the name of the appellant's wife is wholly unsuitable and the appellant needs the flat in question for the bona fide requirement of himself and family and that the appellant is prepared to offer the premises at Harijan Basti which is in his wife's name on tenancy to the respondent-tenant if the respondent was willing to occupy the same. However, learned counsel for the respondent stated that the respondent was unwilling to accept the offer of the alternative accommodation at Harijan Basti which was in the name of the appellant's wife. In these circumstances, we are of the opinion that since the tenant herself believes that the accommodation at Harijan Basti is not suitable for residence, the petition cannot be rejected only on the ground that there is accommodation in the name of his wife at Harijan Basti."

1 (2006) 6 SCC 799

14. In the case of **Sait Nagjee Purushottam & Co. Ltd. Vs. Vimalabai Prabhulal and others**¹ the Apex Court was considering a case of a landlord requiring suit premises for the expansion of an existing business. The landlord therein engaged in other business during the pendency of eviction proceedings. In the context of the said facts, it was held by the Apex Court that the normal rule is that the rights and obligations of parties are to be determined on the date of the petition. Subsequent events can be considered for molding relief, provided such events are of such a nature and dimension to eclipse the need and make it completely lose signification altogether. It is observed that process of litigation cannot be made the basis for denying landlord relief while litigation, at last, reaches the final stages. The Court observed that the longer the life of the litigation, the more would be the number of developments sprouting up during the long interregnum. Therefore, the Courts must take a very pragmatic approach to the matter. It is observed that the landlord is not expected to sit idle during the pendency of litigation. It is held that during the pendency of litigation proceeding, landlord or their progeny engaged in other activities or business, same cannot establish the need for premises is not bona fide. It is held that it is not for the

¹ (2005) 8 SCC 252

tenant to dictate terms to the landlord and advise him what he should do and should not do. It is always the privilege of the landlord to choose the nature of and the place of business.

15. In the case of **Anil Bajaj Vs. Vinod Ahuja**¹ the Apex Court was considering the case of suit premises located on the main road, and the landlord was carrying on a business located in a narrow lane. In the facts of the said case also, the landlord offered to the tenant premises in a narrow lane in exchange for the tenanted premises, which the tenant declined. In the said facts, the Apex Court, in paragraph 6, observed as under:

“6. In the present case it is clear that while the landlord (appellant No. 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant’s case that the landlord-appellant No. 1 does not propose to utilize the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant’s case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use

1 (2014) 15 SCC 610

the same is any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business.”

16. The present case is required to be examined in light of aforesaid settled legal principles. The Appellate Court has disbelieved *bona fide* need of petitioners on the ground that the petitioners are having 200 sq.ft. godown on the backside of the suit building, 600 sq.ft. area on the mezzanine floor and 1800 sq.ft. area on the first floor. The requirement pleaded by the landlord is for the office of transport business. It is stated that on the date of filing of the suit, the office of petitioners was in rented premises at Pardhi Bhavan, Gandhi Bag. The area of rented premises is about 520 sq.ft.. The petitioners, therefore, have

pleaded that they required an area of about 500 to 600 sq.ft. for starting said office as their work has been increasing and they are facing short of accommodation. It is pleaded that there are about 8 to 10 employees including clerk, cashier, accountant, manager and computer operator. They require an area for visitors who visit to take delivery of their goods or to book their consignments. During the pendency of the present proceedings, the tenant has brought on record the fact that petitioners have started their office on the mezzanine floor of the said building. It is an undisputed fact that the petitioners had offered to the respondents to shift their business to the mezzanine floor or the first floor. However, the respondents have refused to shift their business.

17. The evidence on record shows that the godown premises in possession of the petitioners is on the eastern side of the suit building which is on the back side of the suit premises. The suit premises is on the main road. During the present proceedings, the petitioners have started their office on the mezzanine floor of the suit building, and the area of the first floor is in possession of the petitioners. At this stage, it is necessary to consider the fact that the petitioners' need for ground floor premises. Ground floor is more suitable and advantages for carrying out their business as compared to other premises like backside godown, mezzanine

floor or first floor which cannot be termed as a suitable alternative to the ground floor premises on the main road. The commercial premises on the ground floor of main road has definite advantage from commercial angle. It must be noted that the office of transport business on the mezzanine floor cannot attract the same number of customers compared to the office on the ground floor. Precisely for this reason tenant had rejected offer of landlord to shift his business on mezzanine floor. It must be noted that generally, the landlord's need has to be considered on the date of filing of the suit. The bona fide of the landlord for premises or additional premises must be determined by applying the objective standard. Once the Court is satisfied with such bona fide, then in the matter of choosing between more accommodation, the subjective choice of the landlord shall be respected by the Court. On the date of filing of the suit, the petitioners were carrying out business in the rented premises, which the Court cannot forget.

18. The proven fact of the case is that petitioners were carrying out their transport business in rented premises on the date of the suit. The vacant premises available with the petitioner as held by the petitioners as held by the Appellate Court in the suit building cannot be considered a suitable alternative to the carry-on business of transport as compared to suit premises on the

ground floor. Though during the pendency of the eviction proceedings, the petitioners have started their transport business on the mezzanine floor, and the respondents have refused to shift themselves to the said premises. Therefore the said premises cannot be termed as premises suitable to the carry-on business of transport. Certain factual developments are bound to occur when the litigation lingers on for years. All such developments are not necessarily sole factor for the adjudication of the case. No doubt, in proceedings for eviction of the tenant on the ground of the personal requirement of the landlord, sometimes subsequent developments may be relevant to be looked into to enable the authorities to make a fair and proper adjudication of the controversy. While taking note of subsequent developments, the authorities/courts should keep in mind whether such material is relevant and can turn the balance in the case; the controversy should be decided with reference to the pleadings of the parties and the findings placed on record. Therefore, in my opinion courts below were not justified in disbelieving the bona fide need of the landlord for shifting their business to the mezzanine floor during the pendency of eviction proceedings.

19. The next ground for non-suiting the petitioner given by the Appellate Court is non-compliance with Order VI Rule 15 of

the CPC. It is true that Order VI Rule 15 of the CPC that every pleading needs to be verified by the party or one of the parties to the suit, but at the same time, it can be verified by the other person proved to the sanctification of the Court to be acquainted with the facts of the case. In the present case, the plaint has been verified by Shri Sayyad Hasan Abbas, the manager of the plaintiffs' firm. In the verification clause itself, it is stated that he is working as a manager at Nagpur of M/s. Nagpur Bhopal Transport Company of plaintiffs is looking after all the affairs of the suit property. Said Shri Sayyad Hasan Abbas has entered into the witness box and deposed about the bona fide need of plaintiffs. He has stated in his evidence that he is looking after all the affairs of the suit property. In his cross-examination, he denied the suggestion that he was not knowing anything about the firm and was deposing false. Therefore, in my opinion, the verification by PW-2 Shri Sayyad Hasan Abbas, working as a manager in the plaintiffs' firm, is a person who proved to be acquainted with the facts of the case. Even otherwise, in the case of **Vidyawati Gupta and others Vs. Bhakti Hari nayak and others**¹ the Apex Court has held provisions of Order VI Rule 15 to be directory in nature. It has been held that the intention of the legislature in bringing about the various amendment in the Code with effect

¹ (2006) 2 SCC 777

from 01.07.2002 were aimed at eliminating the procedural delays in the disposal of civil matters, and therefore the amendments effected to Order VI Rule 15 was held to be directory in nature and non-compliance therewith would not automatically render the plaint *non-est*.

20. Insofar as the question of the hardship of the tenant is concerned, undisputedly, the respondent has received a suit notice seeking possession of suit property. Single Judge of this Court in **Premprakash Hukumatray Sethi Vs. Smt. Vandana Bhalchandra Altekar**¹ has held that it is settled that the tenant, on receipt of notice for possession or on suit summons, should immediately make sincere efforts to find alternative accommodation, failing which Court would answer the issue of comparative hardship against such tenant. No evidence was produced on record that he had searched for alternative premises after receipt of the notice. Respondent no.2, in cross-examination, has admitted that he had not searched any other rented shop for his business since 07.06.2004. He has further admitted that he owns the Sai Kripa building and has a shop in the said building. He also admitted that the area of the said shop is about 650 to 700 sq.ft. and is doing electrical business. He admitted that he is using the first and

1 2002 (2) RCJ 123

second floors of the said building for his business. In that view of the matter, in my opinion, the defendants will not suffer more hardship than the plaintiffs in case a decree for eviction is passed against them.

21. The learned Senior Advocate, on behalf of the respondents, placed reliance on the judgment of the Apex Court in the case of **Shalini Shetty** (supra) to urge that this Court, in the exercise of power under Article 227 of the Constitution of India, cannot interfere to correct the mere error of fact or just because another view than the one taken by the Tribunal or Court subordinate to it, is a possible view. The Apex Court has further held that the jurisdiction has to be very sparingly exercised.

22. In my opinion, there cannot be a dispute about the proposition of law laid down by the Apex Court. It is well settled that the High Court, in the writ petition, is not entitled to interfere with the findings of the appellate court until and unless it is found that such findings are perverse and arbitrary. There cannot be any dispute over the said proposition of law. However, in the present case, the trial and appellate courts have reached conclusions based on inferences as has been held by Apex Court in ***P. John Chandy and Co. (P) Ltd. v. John P. Thomas***¹, while dealing with a

1 (2002) 5 SCC 90

controversy under the rent legislation arising under the Kerala Buildings (Lease and Rent Control) Act, 1965, it has been ruled that drawing inference from the facts established is not purely a question of fact. The Apex court, in paragraph 9, has held as under:

“9. The finding of the appellate court which has not been accepted by the High Court takes us to consider the point of implied consent due to inaction on the part of the landlord to take any steps for eviction of the tenant. Before considering the relevant provision so as to have proper appreciation of the point, it is observed that drawing inference from the facts established, is not purely a question of fact. It is always considered to be a point of law insofar as it relates to inferences to be drawn from the finding of fact.”

23. In fact, it is always considered to be a point of law insofar as it relates to inferences to be drawn from finding of fact. When inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at on that basis becomes absolutely legally fallible. Therefore, it is permissible for this court in exercise of its writ jurisdiction to substitute the finding of fact which has been arrived at by the courts below.

24. The Apex Court in the case of **Raghunath G. Panhale Vs. Chaganlal Sundarji and Company** has held that in cases where the Courts below practically equated the test of “bona fide need or requirement” with “dire or absolute or compelling necessity”, the High Court cannot refuse to exercise superior jurisdiction under Article 227 simply holding that it could not interfere with the findings of fact and dismissing landlord’s writ petition.

25. Therefore, in my opinion, the inference drawn by the Courts below disbelieving bona fide need of landlord on the ground that the petitioners have sufficient vacant premises available in the suit building in the form of godown on the eastern side, mezzanine floor, and first floor is perverse. Merely because petitioners have started business on the mezzanine floor during the pendency of proceedings that would not eclipse bona fide need of landlord to start the business on the ground floor facing the main road, this Court cannot forget that the petitioners on the date of filing of the suit were doing business in rented premises. The offer of petitioners to shift their business to the first floor has been rejected by the respondents. In that view of the matter, the landlord is entitled to get possession of 200 sq.ft. of suit premises. In the result, the Rule is made absolute in terms of prayer clause (2), which reads as under:

“2. After perusal of the same quash and set aside the judgment and decree dated 11/11/2009(Annex-VIII) passed in Regular Civil Suit No.264/2004 by the court of Additional Judge, Small Cause Court, Nagpur; so also quash and set aside the judgment and decree dated 30/08/2012 (Annex-X) passed in Reg Civil Appeal No.27/2010 by the learned Ad Hoc District Judge-4, Nagpur; and decree the Regular Civil Suit No.264/2004 (Annex-I) in its entirety;”

No costs. Pending civil application(s), if any, stand(s) disposed of.

JUDGE

Wagh