

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

WRIT PETITION NO. 3746 OF 2022

Shri Ashok S/o Kiranrao Kondawar

Since deceased

Through Legal Representatives

1. Smt. Shobha Wd/o Ashok Kondwar
Aged : 67 Years, Occ. : Household
2. Rahul S/o Ashok Kondawar
Aged : 37 Years, Occ. : Service
3. Smita W/o Rupesh Pawar
(Smita D/o Ashok Kondawar)
Aged 39 Years, Occ. Household
4. Bharti W/o Jayprakash Gadgilwar
(Bharti D/o Ashok Kondawar)
Aged : 44 Years, Occ.: Household
All petitioner nos. 1 to 4 R/o Plot
No.7, Milind Society, Narendra Nagar,
Nagpur

...Petitioners

// VERSUS //

Shri Sunil S/o Ramvallab Sarda

Aged 52 Years, Occ. Business

R/o 6, Date Layout, Opposite Dhowe

Sabhagruha, Swalabi Nagar, Nagpur

... Respondent

Shri P.S.Khubalkar, Advocate for the petitioners.

Shri R.N.Sen, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 1st FEBRUARY, 2023.

ORAL JUDGMENT :

In this writ petition, question raised to the impugned judgment and order dated 15th January, 2022 passed by District Judge-1

& Additional Sessions Judge, Nagpur in Regular Civil Appeal No. 425 of 2019, reversing the decree of eviction granted by the Small Causes Court, Nagpur in Regular Civil Suit No. 81 of 2015.

2. The brief facts of this case, are as follows :

Landlord Shri Ashok Kondawar filed a suit for ejection, possession and arrears of rent. The petitioners are the legal heirs of the plaintiff. Whereas, the respondent is the tenant/defendant.

3. It is the case of the plaintiff that he is the owner of the Shop Block No.1, situated Sumangal Apartment, Plot No.45, Greter Nagpur Co-operative Society, Ramkrishna Nagar, Nagpur. It is stated that tenant was given the suit shop after execution of leave and licese agreement on 1st February, 2013.

4. The ejectment and possession was claimed by the plaintiff is on the ground that the defendant is irregular in paying rent amount and the cheque which was issued on a request made by the landlord for payment of arrears of rent, was dishonoured.

5. It is further stated that the suit shop needed for *bona fide* requirement for starting business by his son. The another ground was about carrying out alterations by the respondent in the suit shop without permission of the plaintiff.

6. The defendant filed his written statement at Exhibit 17 and resisted the claim of the plaintiff. However, though the plaintiff examined himself, the defendant failed to cross-examine the plaintiff and further failed to adduce any evidence in his favour.

7. Thus, after scrutinizing the oral as well as documentary evidence produced by the plaintiff, the suit was decreed in favour of the plaintiff and thereby directed the defendant to vacate the peaceful possession relating to suit property and inquire into future mense profit under Order XX Rule 12(1)(c) of the Code of Civil Procedure.

8. The defendant thereafter carried out the said judgment and decree dated 17th February, 2018 in appeal filed under Section 26-A of the Provincial Small Causes Courts Act read with Section 34 of the Maharashtra Rent Control Act. The learned lower Appellate Court allowed the said appeal and reverse the judgment and decree of the trial Court, the same is under challenge.

9. Shri Khubhalkar, learned counsel for the petitioners submits that in absence of any cross-examination of the plaintiff and without adducing any evidence adduced by the defendant, the learned lower Appellate Court recorded findings contrary to the evidence and thereby committed perversity.

10. It is submitted that though sufficient evidence has been produced to establish that the *bona fide* requirement, the findings as

regards the *bona fide* requirement has been reversed by the lower Appellate Court without recording sufficient reasons.

11. It is submitted that only because another view is possible the Appellate Court cannot disturb decision arrived at by the trial Court.

12. Shri Khubhalkar, learned counsel for the petitioners has placed reliance on the judgment of the Supreme Court of India in the case of Gaya Prasad Vs. Pradeep Srivastava¹.

13. On the other hand, Shri Sen, learned counsel for the defendant/respondent submits that lower Appellate Court has rightly reversed the judgment and decree of the trial Court after recording the reasons. It is submitted that from the title clause itself it is sufficient to arrive at a conclusion that son of the landlord is in service and her sisters are not in need of the suit premises. It is submitted that the *bona fide* requirements therefore, does not subsists.

14. He further submits that because of the mistake of the lawyer, the cross-examination was not made on behalf of the defendant and therefore, the matter be remanded back to the trial Court for adducing evidence. It is further submitted that petitioner wants to sell the suit shop. Thus, he submits that the writ petition is devoid of any merit and it may be dismissed.

1 2001(2) SCC 604

15. In the light of the rival contentions of the parties, I have perused the documents filed alongwith the writ petition and impugned judgment and order.

16. Learned Appellate Court while reversing the judgment and decree passed in favour of the petitioner for ejectment and possession and arrears of rent, has recorded findings in paragraph 8 of the impugned judgment and decree which read thus:

“8. No doubt the landlord is best judge of his need. The Court and tenant cannot dictate upon him as to where and on what terms he should suffice his need. But, at the same time, when the plaintiff is claiming the suit shop for his bonafide need, there should be some material to that effect in the pleadings. Even, the name of the son of plaintiff for whom the premises is required, is not disclosed. So also, the nature of business which the son of plaintiff intends to start is not disclosed. The suit shop would be sufficient to cater the need of the plaintiff to carry out the business of his son, is also not disclosed. The need of the plaintiff must not be fanciful. For bonafide need, there should be an urge for the premises. Mere desire would not be sufficient for the requirement of the premises. The basic requirement to demonstrate the bonafide need of the plaintiff is not emerging from the pleadings and evidence of the plaintiff. Mere unchallenged testimony of the plaintiff is not sufficient to establish that the plaintiff bonafidely required the suit shop. The requirement of the plaintiff of the suit shop for his bonafide use and occupation appears to be fanciful. As pointed above, there is a casual statement as regards the requirement of the suit shop by the plaintiff for his personal bonafide need without divulging the details of the same. Therefore, the plaintiff has not proved that the suit shop is required for his bonafide use and occupation.”

17. From the above evidence, it is evident that the findings recorded by the learned trial Court holding that the landlord needs the

suit shop for his *bona fide* requirement, came to be reversed on the ground that the plaintiff has not produced any material namely the name of the son who requires the premises for business purpose, nature of business which the son of the plaintiff intends to start, whether the shop would be sufficient for his son etc. The learned lower Appellate Court has further held that *bona fide* need, should not be fanciful and mere desire would not be sufficient for the requirement of the premises.

18. The Hon'ble Supreme Court in the case of *Gaya Prasad Vs. Pradeep Srivastava* (supra) while dealing with the issue as regards the bonafide requirement and the crucial date for deciding such bonafide requirement has observed thus:

10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may

get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred *pendente lite*, because the opposite party succeeded in prolonging the matter for such unduly long period.

11. We cannot forget that while considering the *bona fides* of the need of the landlord the crucial date is the date of petition. In *Remesh Kumar vs. Kesho Ram* [1992 Suppl. (2) SCC 623] a two-Judge Bench of this Court (M.N. Venkatachalia, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the *lis* commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this:

6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the *lis*. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a cautious cognizance of the subsequent changes of fact and law to mould the relief.”

19. From the above referred observations of the Hon’ble Supreme Court of India, it is evident that the crucial date for deciding as to the *bona fides* of the requirement of the landlord, is the date of his application for eviction. It is further held that if every subsequent development during the post petition period is to be taken into account

for judging the *bona fides* of the requirement pleaded by the landlord, there would perhaps be no end.

20. In the circumstances, the contention of the learned counsel for the respondent that presently the son of the petitioner is in employment and the *bona fide* requirement does not subsist, cannot be accepted as the crucial date for deciding as to the *bona fide* requirement of the landlord is the date of the application.

21. Another contention of the respondent is that because of the mistake of the lawyer, the cross-examination was not made on behalf of the defendant and therefore the matter be remanded back to the trial Court for adducing evidence, cannot be accepted for the reason that no sufficient material was produced by the respondent showing that he was diligent and even after taking necessary care, the cross-examination could not be conducted or the evidence was not adduced on behalf of the respondent.

22. The Hon'ble Supreme Court of India, time and again has held that the land lord is the best judge to decide whether his need in terms for *bona fide* requirement and as such bona fide requirement cannot be doubted on the ground that there is no pleadings disclosing the nature of business, whether the premises would be sufficient to cater the need of the land lord to carry out the business etc.

23. In view of the above referred observations, I have no hesitation to hold that learned Lower Appellate Court has committed

error in reversing the judgment and decree of the trial Court by recording the findings which are contrary to law. In the circumstances, I pass the following order.

- i. Writ petition is allowed;
- ii. The impugned judgment and order dated 15th January, 2022, passed by the District Judge-1 and Additional Sessions Judge, Nagpur in Regular Civil Appeal No. 425 of 2019 is hereby quashed and set aside.

Rule is made absolute in above terms.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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by
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K NAIR
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