



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 120 OF 2007

Sindhubai w/o Balkrishna Mayur,
age: 61 years, Occ: Business,
R/o Main Road, Shrirampur,
District Ahmednagar.

Petitioner

Versus

- 1 Vijay Zumbarlal Bafana
(deceased), through his L.Rs:
- 1-a Smt. Pushpa w/o Vijaykumar
Bafana, age: 55 years,
Occ: Household;
- 1-b Vaishali d/o Vijaykumar Bafana,
age: 27 years, Occ: Household;
- 1-c Rushali d/o Vijaykumar Bafana,
age: 25 years, Occ: Household;
- 1-d Chetna d/o Vijaykumar Bafana,
age: 23 years, Occ: Household;
- 1-e Vaibhav s/o Vijaykumar Bafana,
age: 21 years, Occ: Education;
- 2 Abhay s/o Zumbarlal Bafana,
age: 48 years, Occ: Business;
- 3 Ashok s/o Zumbarlal Bafana,
(deceased) through his L.Rs:
- 3-a Smt. Vijaya w/o Ashok Bafana,
age: 58 years, Occ: Household;
- 3-b Atul @ Atish s/o Ashok Bafana,

age: 38 years, Occ: Business;

3-c Abhijeet s/o Ashok Bafana,
age: 36 years, Occ: Business;

4 Sudarshan s/o Zumbarlal Bafana,
age: 40 years, Occ: Business;

All R/o Main Road, Shrirampur,
Tq. Shrirampur, District
Ahmednagar

Respondents

Mr. N. R. Bhavar, advocate for the Petitioner

Mr. S. P. Shah, advocate for Respondents No.1-a, 1-e, 2, 3-a to
3-c and 4.

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on : 16th January, 2024

Pronounced on : 14th February, 2024

JUDGMENT :

1 The petitioner, who is original defendant no.1 in
RCS No. 189/84, has challenged the judgment and decree
dated 28.07.2006, passed by the 2nd Additional District
Judge, Shrirampur (herein after referred to as 'the learned
appellate Court') in RCA No. 303 of 1987, by which, the
decree dated 23.03.1987, in the aforesaid suit, has been
confirmed. The learned appellate Court has also added one
additional ground for eviction of the present petitioner as well

as original defendant no.2 from the suit premises under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'the Bombay Rents Act').

2 The background facts are as under:

The suit property in dispute is the house property bearing municipal house No. 729, situated upon CTS No. 666 at Main Road, Shrirampur. The present respondents, who are the original plaintiffs, have purchased the suit property from Kotasthane on 20.01.1983 wherein the present petitioner was tenant at monthly rent of Rs.8/-. Thereafter, the respondents, on 09.12.1983, issued notice for termination of tenancy on the ground that the petitioner did not pay rent from 01.01.1983 to 31.12.1983 and thus become defaulter. The respondents also claimed that they required the suit premises for their personal use and occupation. Despite such notice, the petitioner did not vacate the suit premises and, therefore, the respondents filed the present suit before the trial Court i.e. RCS No.189 of 1984.

3 The present petitioner i.e. defendant no.1 appeared before the learned trial Court and resisted the suit claim of present respondents in her written statement. According to her, she was never a defaulter and was paying the rent regularly to the erstwhile owner Kotasthane and as she was not aware about the purchase of suit premises by the present respondents, she could not pay the rent to them. She also denied the allegations regarding subletting of the suit premises to defendant no.2.

4 The learned trial Court has decreed the suit and the learned appellate Court dismissed the appeal against the said decree by allowing the counter claim of the present respondents for claiming possession of the suit premises on the ground of *bona fide* requirement. Hence, this Revision.

5 The learned Counsel for the petitioner vehemently argued that both the Courts below did not appreciate the evidence on record and despite holding that there was no subletting by the present petitioner in favour of original defendant no.2, ordered delivery of possession of the suit

premises under Section 13(1)(e) of the Bombay Rent Act. He pointed out that no opportunity was given to the present petitioner for leading evidence on the point of comparative hardship since the learned appellate Court, without recording any evidence, allowed the counter claim of the present respondents – original plaintiffs by directing the present petitioner to hand over possession of the suit premises on the ground of *bona fide* requirement i.e. under Section 13(1) (g) of the Bombay Rent Act. He pointed out that the learned trial Court has also recorded an erroneous finding about the requirement of present respondents of the suit premises under Section 13(1)(i) of the Bombay Rent Act. He relied upon the following judgments:

(1) In the case of **Kazi Cumruddin Hussein Vs. Rajendrakumar Maneklal & another**, reported in 1981 MhLJ 239;

(2) In the case of **Rangnath R. Galgali Vs. Pralhad G. Joshi**, reported in 1998 (1) B.C.J. 444;

(3) In the case of **Ram Sarup Gupta (dead) by L. Rs. & others Vs. Bishun Narain Inter College and others**, reported

in AIR 1987 SC 1242

(4) In the case of **Shrirang Dharmaraj Kale Vs. Najmunissa A. Rahimbee Shaikh & others**, reported in 2003 (1) MhLJ 638;

6 On the contrary, learned Counsel for the respondents-plaintiffs supported both the judgments of the Courts below and argued that both the Courts below have rightly appreciated the evidence on record and properly recorded the finding for delivery of possession of suit premises to the respondents-plaintiffs. He pointed out that though it was held by the trial Court that handing over possession of super-structure to defendant no.2 by the petitioner – defendant no.1 did not amount to subletting, but observed that the respondents are entitled for possession of the suit premises since it was transfer of interest in respect of suit premises. He pointed out that it is absolutely not necessary to remand the matter for leading evidence afresh on the point of comparative hardship because the learned appellate Court has found that the evidence, to that effect, was already on record. He also relied on the judgment of this Court in the case of **Vasant Ramchandra Sharma Vs. Narayanibai**

Mulchand Agrawal, reported in AIR 1973 Bom 214.

7 Heard rival submissions, perused both the judgments and decrees passed by both the Courts below and the Record and Proceedings.

8 It is significant to note that the present respondents – plaintiffs had filed the suit for possession of the suit premises mainly on the ground of default in payment of rent, subletting of the suit premises under Section 13(1)(e), requiring the suit premises for erection of building as per Section 13(1)(i) and for *bona fide* use under Section 13(1)(g) of the Bombay Rent Act. The learned trial Court has granted delivery of the suit premises to the respondents-plaintiffs on the ground of unlawful subletting and requirement of suit premises for erection of new building. However, the learned appellate Court, considering the cross objections of the plaintiffs also added ground under Section 13(1)(g) i.e. requirement of the suit premises for *bona fide* use of the landlord.

9 So far as unlawful subletting is concerned, it has already come on record by the evidence of Shop Inspector of Municipal Council, Shrirampur, examined by the present respondents-plaintiffs at Exhibit-109, that the shop named and styled as Fashion Tailors, in the part of the suit premises, stood in the name of defendant no.2. He also relied on the Shop Act license issued by the Municipal Council, Shrirampur, in the name of defendant no.2. In addition to that, photographs of the shop are also on record at Exhibits-96 to 100. The photographs are already admitted by the petitioner as well as by defendant no.2, being of the shop situated on suit premises. Therefore, the possession of defendant no.2, which has been established on the basis of documents, indicates unlawful subletting of the suit premises by the present petitioner – defendant no.1 in favour of defendant no.2. The learned Counsel has heavily placed reliance on the judgment of this Court in the case of **Kazi Cumruddin Hussein** (*supra*), wherein it is observed that lease of open site, super-structure constructed by the tenant and let out by him does not amount to subletting under Section 15(1) of the Bombay Rent Act.

10 To counter this, learned Counsel for the respondents – plaintiffs also relied on the judgment of this Court in the case of **Vasant Ramchandra Sharma** (*supra*), wherein it has been observed as follows:

““Creation of irrevocable license in respect of super-structure by a tenant is a transfer or assignment” in any other manner of his interest within Section 13(1)(e) and, therefore, the landlord is entitled to get possession of the premises under the said Section.”

11 Considering these observations, it appears that even if handing over part of super-structure by the present petitioner to defendant no.2 does not amount to subletting, but as per the language of Section 13(1)(e), it still can be treated as transfer of interest in respect of the suit premises entitling the landlord to get possession of the suit premises under Section 13(1)(e) of the Bombay Rent Act. The learned trial Court has observed the same thing, which is confirmed by the learned appellate Court. Therefore, there cannot be

any second opinion as to why the present respondents – plaintiffs are not entitled to recover possession of the suit premises under Section 13(1)(e) of the Bombay Rent Act.

12 In view of the same, the findings of both the Courts below in respect of direction of handing over of possession of the suit premises to the respondents – plaintiffs under the provisions of Section 13(1)(e) of the Bombay Rent Act cannot be doubted.

13 So far as contention of the respondents-plaintiffs that they are in need of the suit premises for erection of new building is concerned, it is there case that they have prepared the proposed construction plan and also estimate of cost for the construction work of the building which is to be erected on the suit premises. According to them, they have also obtained necessary permission from the Municipal Council. They have also adduced evidence on record to show that they possess sufficient funds for construction of new building. On the contrary, there is no evidence by the petitioner to show that intention of the respondents-plaintiffs to seek possession

of the suit premises on the ground of erecting new building is *mala fide*. Therefore, the finding recorded by the learned trial Court, about demand of suit premises by the respondents-plaintiffs for erecting new building, appears proper and duly supported by the evidence to that effect. The learned appellate Court has also discussed the said evidence in proper perspective and also reiterated the settled position that the tenant cannot dictate as to how the landlord should use his property. Therefore, the finding recorded by both the Courts below, in favour of the respondents – plaintiffs that they require the suit premises for erection of new building, appears appropriate in the light of evidence on record.

14 So far as respondents – plaintiffs’ claim under Section 13(1)(g) i.e. *bona fide* requirement is concerned, the learned trial Court did not find it necessary to be allowed as it has already ordered delivery of possession of the suit premises to the respondents – plaintiffs under Section 13(1)(i) of the Bombay Rent Act. However, the learned appellate Court, while discussing the evidence on record in respect of Cross Objections filed by the present respondents – plaintiffs

in the appeal, has held that the demand of plaintiffs in respect of possession of the suit premises under Section 13(1) (i) of the Bombay Rent Act also includes claim under Section 13(1)(g) of the Act. On going through the judgment of the learned appellate Court, it appears that the learned appellate Court has relied upon following observations made by this Court in the case of **Abdul Rehman @ Iqbal Faizukhan Pathan, through L.Rs Vs. Kamlaben Mohanlal Shah**, reported in 1999 (2) MhLJ 592:

“We noticed that Section 13(1) (h), 13(1)(hh), 13(1)(g)(hhh) and 13(1)(i) deals with different constructional activities to be carried out in the premises. Section 13(1)(h) deals with situation where the premises require reasonable and *bona fide* for carrying out repairs. Section 13 (1)(hh) deals with where premises require demolition and reconstruction. Section 13 (1) (hhh) deals with circumstance where the premises are required to be demolished by orders of the local authority or other competent authority and Section 13(1)(i) deals with situation where the landlord

requires the land *bona fide* for erection of a new building. Looking at these sub-clauses, though the same deals with different facets of constructional activities on the premises, a common factor which is present in all these clauses is that the landlord should establish his reasonable and *bona fide* requirement for the constructional activities as enumerated in clauses 13(1)(h), (hh), (hhh) and (i). Though these sub-clauses are demonstrably distinct from wording of Section 13(1)(g), it contain a common feature i.e. found in all these feature of reasonable and *bona fide* requirement of the landlord. But clause 13(1)(g) comes into play only where the eviction is sought for his personal use and occupation. In other words, the personal use or occupation by landlord which is found in 13(1)(g) is lacking in other sub-clauses. In view of this analysis Mr. Rege is justified in arguing that wherever eviction is sought for the *bona fide* and reasonable requirement for personal use after the constructional activities contemplated in these clauses, it is squarely coming u/sec. 13(1)(g) and not u/sec. 13(1)(i) or any other

clauses.”

15 Besides that, it is also observed that after construction of new building, it is the sweet choice of the landlord, whether to use it for personal occupation or let out by lease. Thus, it appears that even after seeking possession of the suit premises under Section 13(1)(i) of the Bombay Rent Act, the landlord can still seek possession simultaneously under Section 13(1)(g) of the Bombay Rent Act. Therefore, it appears that the finding in respect of requirement of the suit premises by the respondents-plaintiffs on the ground of *bona fide* use, recorded by the learned appellate Court, appears sound in nature.

16 Once it is observed that the landlord is entitled for possession of the suit premises under Section 13(1)(g) of the Bombay Rent Act, then the issue of comparative hardship needs to be resolved. The learned Counsel for the petitioner – defendant no.1 vehemently argued that the learned appellate Court, without giving any opportunity to the petitioner to lead evidence on the point of comparative hardship, decided the

same against her. He, therefore, pointed out that the matter needs to be remanded back for leading evidence by the petitioner on this aspect. However, on going through the judgment of the learned appellate Court, it appears that the learned appellate Court has decided this aspect of comparative hardship on the basis of evidence led by both the parties. It appears that the learned trial Court, on the basis of evidence on record, has recorded a finding that the petitioner is having alternate premises in the form of two-storied building comprising of four rooms on each floor, which exists on plot admeasuring 480 square meters.

17 There is sufficient evidence on record that the said premises is owned by present petitioner and located in the heart of Shrirampur town and at one side of the said premises, a municipal road is also there. The petitioner herself examined at Exhibit-150 and stated that she and her mother-in-law own a built up house at Shrirampur and there is no partition of that house. According to her, there are two rooms on the first floor and two rooms on the ground floor and the said house is in possession of Meghjani and Yeole

since last 35 years. However, in the cross examination, she has admitted that the said building is situated behind Laxmi Talkies, Shrirampur and there is municipal road adjoining to her house, which passes and connects North-South road of Shrirampur City. She has also admitted that the premises, which was in possession of Madan is still lying vacant. She also admitted that in all there are 8 rooms, 4 on the first floor and 4 on the ground floor and that the rooms on the first floor are vacant. She has also admitted that there are hotels and shops situated on the main road of Shrirampur. Therefore, considering this evidence of the petitioner, it appears that the petitioner is definitely having alternate accommodation, which can satisfy her need of place for her business. No where it is mentioned by her that the aforesaid premises, is not suitable for her occupation, residence or business. Thus, there is no substance in the submission of the learned Counsel for the petitioner that for deciding the issue of comparative hardship, the matter needs to be remanded back to the trial Court, as there is ample evidence on record showing that the petitioner is having an alternate accommodation for satisfying her need for suitable premises.

On the contrary, family of respondents is comprising families of four brother and, therefore, comparative hardship would be more to them as compared to the need of the petitioner.

18 Learned Counsel for the petitioner has relied on so many judgments, as mentioned above, but some of them are already considered by the Courts below and some of them are not helpful either being irrelevant or based on different facts.

19 Considering all these facts, it appears that both the Courts below have rightly appreciated the evidence on record and rightly directed the petitioner to hand over possession of the suit premises to the respondents-plaintiffs. As such, no interference, in the findings of both the Courts below, is required.

20 In the result, Civil Revision Application stands dismissed.

21 At this stage, learned Counsel for the petitioner submits that the petitioner wants to challenge the order

passed by this Court today and, therefore, requested to continue the interim relief.

22 Learned Counsel for the respondents, though opposed the request, but fairly accepted that interim relief was there during the pendency of this Civil Revision Application.

23 In view of the same, the interim relief, which was in force during the pendency of this petition, is continued for further period of six weeks.

(SANDIPKUMAR C. MORE)
JUDGE