

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.603/2022

KAVERI CORPORATION, PROP
CONCERN OF ANURADHA
NAGESH DAIVAJNA, REP. BY
ATTORNEY, NAGESH M.
DAIVAJNA ... PETITIONER

Versus

MARIA SITA SAROJINI
FILOMENA PINTO DA COSTA ... RESPONDENT

Mr Ashwin Bhobe with Ms A. Fernandes, Advocates for the
Petitioner.

Mr Tarshish Pereira, Advocate for the Respondent.

CORAM: M. S. SONAK, J.

DATED: 12th JANUARY 2024

P.C.:

1. Heard Mr Ashwin Bhobe for the Petitioner and Mr Tarshish Pereira for the Respondent.
2. This petition challenges the concurrent orders of eviction made by the Civil Judge, Junior Division and Ad-hoc District Judge ordering petitioner's eviction from suit premises on the ground that the same were bonafide required by the respondent.

3. Mr Bhobe submits that no case of requirement was made out by the respondent and therefore, no eviction should have been ordered on this ground. He points out that the premises in question were used for commercial purposes. Based on the provisions of Sections 23(1)(b) and 23(3) of the Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, no eviction on the grounds of bonafide requirement could have been ordered from commercial premises.

4. Mr Tarshish Pereira, learned counsel for the respondent submits that the concurrent findings of fact have been recorded by the two courts based upon the evidence lead by the parties. He submits that there is no perversity whatsoever in the record of such findings of fact. Further, he relies on *M/s. Alcon Construction (Goa) Pvt. Ltd. & Anr. v/s. State of Goa & Anr. - Writ Petitions No.726 of 2017, 377 and 811 of 2019 decided on 07.02.2023* to submit that no distinction can be made between commercial premises and residential premises when it comes to eviction on the ground of bonafide requirement. He therefore submits that this petition may be dismissed.

5. The rival contentions now fall for our determination.

6. On perusing the impugned orders made by the Civil Judge, Junior Division and District Judge, no case is made out to interfere with the concurrent findings of fact recorded by the two courts. The respondent not only pleaded of bonafide requirement but further, a witness, who was the brother and duly constituted power of attorney was examined. From the evidence on record, it

cannot be said that the respondent had only made out the case about the desire to repossess the suit premises and that no case of bonafide requirement as such was made out.

7. The courts have considered not only the evidence on record but also the rulings of this court including the rulings in *Dr. Mulla Malhandas Khemani (since deceased) v/s. Shri Avelino Gregorio D'Souza (since deceased) & Ors. - Letters Patent Appeal No.5 of 1992 decided on 16.12.1999* and *Anand S. Lad v/s. Ms Amira Abdul Razak & Ors. - 2013 BCI 1193* to hold that a case of bonafide requirement was made out by the respondent.

8. The two courts have held that the respondent had no alternate residence in the city of Margao. This evidence stood the test of cross-examination. The courts have also held that the landlord is the best judge of his or her requirement and that it was not for the tenant to dictate any terms to the landlord. Even the aspects of balance of convenience and hardships have been duly considered. Accordingly, no case is made out to interfere with the concurrent findings of fact recorded by the two courts particularly since these findings of fact cannot be said to be perverse or based upon no evidence whatsoever.

9. Regarding the other contentions raised by Mr Bhobe, the same stands answered by the decision of this Court in *M/s. Alcon Construction (Goa) Pvt. Ltd. (supra)*. In the said case, the Division Bench of this Court has held that no distinction can be made between commercial and residential premises when it comes to seeking eviction of a tenant on the ground of bonafide

requirement. Accordingly, even on this ground, no case is made out to warrant interference with the impugned orders made by the two courts concurrently ordering the petitioner's eviction.

10. In this case, the petitioner was earlier granted interim relief subject to condition of deposit of compensation of Rs.50,000/- per month. However, the petitioner failed to make deposits. As a result interim order stood vacated. This was noted in the order dated 06.10.2023.

11. Though the issue of vacation of interim relief is not at all relevant, based upon the above discussion in the context of the grounds raised in support of this petition, this petition is liable to be dismissed and is hereby dismissed. There shall be no order for costs.

M. S. SONAK, J.

SUCHITRA
NANDAN
SINGBAL

Digitally signed by
SUCHITRA NANDAN
SINGBAL
Date: 2024.01.15
16:01:07 +05'30'