

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2779 OF 1997

Shri. Nasaruddin Kadarsaheb Momin (Since Deceased)

Thr. Heirs 1.1. Jaibnisa Nasaruddin Momin & Ors.

... **Petitioners**

Versus

Shri. Balkrishna Ramchandra Kajave (Since Deceased)

Thr. Heirs 1.1.Smt. Shalini Balkrishna Kajave & Ors.

... **Respondents**

Mr. S. M. Railkar for the Petitioners.

Mr. Bhushan Mandlik i/b Mr. S. S. Patwardhan for the Respondents.

CORAM : SANDEEP V. MARNE, J.

DATE : 19 JULY 2024.

P.C. :

1) The Petitioner has filed this Petition challenging the Decree of District Judge, Kolhapur, allowing Regular Civil Appeal No. 106 of 1994 and dismissing the Regular Civil Suit No. 1199 of 1986 filed by him seeking eviction of the Respondent from the suit premises.

2) I have heard Mr. Railkar the learned counsel appearing for the Petitioners and Mr. Mandlik the learned counsel appearing for Respondents.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the Defendant is a tenant in respect of shop premises at Kolhapur. Plaintiff instituted suit seeking eviction of the Defendant on the ground of default in payment of rent as well as his bonafide requirement. Initially the Trial Court decreed the suit only on the grounds of bonafide requirement of Plaintiff-Landlord. The Appellate Court has however reversed the decision of the Trial Court by rejecting even the ground of bonafide requirement.

4) Perusal of the finding recorded by the Appellate Court in para 8 of its Judgment would indicate that during the course of cross-examination of Plaintiff's constituted attorney, it transpired that Plaintiff's family owned three properties viz City Survey Nos. 1644 (suit building), 1645/C and 1646 - Kh. While the suit building bearing City Survey No. 1644 is in the name of the Plaintiff, the other two properties bearing City Survey Nos. 1645/C and 1646 -Kh are in the name of the Plaintiff's wife. It also transpired during the course of evidence that in the suit building, space admeasuring 35 x 7 ft. was available for the Plaintiff. Firstly Plaintiff suppressed ownership of various properties by his family members in the Plaint as well as in the affidavit of evidence. The ownership of the said properties was discovered only during the course of cross-examination. In my view, once the suit was filed claiming alleged bonafide requirement of Plaintiff's graduate sons to start a business in the suit premises, it was incumbent for him to disclose in the Plaint or atleast in the examination in chief ownership about various premises in Kolhapur city and to prove that none of the said premises were suitable for start a business by his children. Though Mr. Railkar has submitted that the

properties owned by his wife cannot be considered while determining bonafide requirement of the Plaintiff, it must be observed that the Plaintiff did not set up a case that his wife was not allowing the use of her properties by her children or that the wife was staying separately with Plaintiff. In that view of the matter, mere factum of ownership of some of the properties by his wife cannot be a reason to absolve Plaintiff of the requirement of disclosing ownership and possession of all properties in the city while setting up the case for bonafide requirement.

5) In my view, Plaintiff has thoroughly failed to prove the ground of bonafide requirement. The Appellate Court has rightly reversed the decree passed by the Trial Court. No interference is warranted in the exercise of writ jurisdiction by this Court under Article 227 of the Constitution of India.

6) Writ Petition is accordingly dismissed. Rule is discharged.

[SANDEEP V. MARNE, J.]