



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

Writ Petition No. 958 of 2011

Petitioner
No. 1 is
deleted as per
Court order
dtd. 1-12-2020

- (1) Smt. Prabhvati wd/o Ramkrishna Gotmare, - Deleted
Aged about 70 years, Occupation-Nil,
- (2) Shri Rajendra s/o Ramkrishna Gotmare,
Aged about 49 years, Occupation-Service,
- Both R/o Gotmare Complex, North
Ambazari Road, Dharampeth,
Nagpur. ... Petitioners

- Versus -

Shri Motiram s/o Madhomal Hemnani,
Aged about 64 years, Occupation-Business,
R/o C/o Gotmare Complex, 181,
North Ambazari Road, Dharampeth,
Nagpur. ... Respondent

Mr. S. P. Kshirsagar, Advocate for the petitioners
Mr. S. S. Dewani, Advocate for the respondent

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 25-07-2024
Date of pronouncing judgment : 06-08-2024

JUDGMENT

Heard Shri S. P. Kshirsagar, learned counsel for the
petitioners and Mr. S. S. Dewani, learned counsel for the respondent.

2. The petitioners (original plaintiffs) filed suit for recovery of possession and rent of the suit premises against the respondent – tenant. The suit premises is shop block, admeasuring 200 sq.ft. and is detailed in the schedule of plaint. The petitioners sought possession of the suit shop for extension of the business of petitioner no. 2's wife, who was allegedly involved in the business of beauty parlour and garment shop. The business was run by petitioner no. 2's sister in the name and style "Ladies Corner". The possession of suit shop has been sought also on the ground of opening the office for plaintiff no. 1's girls hostel. The possession was sought in terms of Section 18(1)(g) of the Maharashtra Rent Control Act, 1999.

3. The respondent opposed the suit by filing written statement. According to the respondent, the pleadings are vague and the claim is based on assumptions and presumptions. The respondent further pleaded that he is occupying the suit shop for last 40 years. He requires suit shop for maintaining himself and his family members (10 in numbers).

4. Learned Small Causes Court, Nagpur, after recording evidence and after giving opportunity to both sides, has answered the issue of *bona fide* need of landlord in petitioners' favour but held that if the decree is passed, greater hardship will be caused to the respondent

and accordingly dismissed the suit vide judgment and decree dated 21-8-2007. The decree was challenged before the District Judge-6, Nagpur in Regular Civil Appeal No. 486/2007. Learned District Judge has upset the findings of the trial Court on the point of *bona fide* need of the petitioners (landlord) and maintained the trial Court's finding as regards hardship that will be caused to the respondent and accordingly dismissed the appeal and upheld the decree.

5. Learned Advocate for the petitioners argued that though the respondent has not challenged the decree, the first appellate Court has upset the finding of *bona fide* need given by the trial Court in favour of the petitioners. This argument has been rightly countered by the learned counsel for the respondent by contending that while supporting the decree of the trial Court, the party, in whose favour the decree is, need not file appeal or cross objection to challenge a particular finding rendered against the said party by the trial Court. This legal proposition finds place in the judgment passed by the Supreme Court in the case of ***S. Nazeer Ahmed Vs. State Bank of Mysore and others [(2007) 11 SCC 75]*** and the judgment passed by this Court in the case of ***Surajansingh s/o Mohansingh Vs. Jasbir Kaur wd/o Sardar Chanansingh and others [2008(2) Mh.L.J. 763]***.

6. The first appellate Court then noted from the pleadings that the petitioners required a suit shop for 3 different reasons : (1) to open office for the girls hostel run by plaintiff no. 1, (2) for expansion of beauty parlour of plaintiff no. 2's wife and further (3) for expansion of business of plaintiff no. 2's sister.

7. The first appellate Court recorded various reasons to find fault in petitioner no. 1's requirement to open office for girls hostel, however, the most important reason assigned was that petitioner no. 1 did not step into witness box to justify her need of the suit shop for opening office for proposed girls hostel. The first appellate Court rightly held that had the petitioner no. 1 stepped into witness box, the respondent could have got a chance to cross-examine her and to test credibility of her version. Accordingly, the first appellate Court held that she failed to prove that her need was *bona fide* and reasonable.

8. So far as the expansion of business is concerned, the first appellate Court noted that the expansion is required for petitioner no. 2's wife - Praveena Gotmare and sister Sau. Rekha Dhole. It appears that Sau. Rekha Dhole had filed affidavit of chief-examination but did not subject her to cross-examination. Accordingly, her evidence has been rightly discarded. Then remains the proof of requirement of suit shop for expansion of business of plaintiff no. 2's wife.

9. Smt. Praveena Gotmare, wife of plaintiff no. 2 has deposed in cross-examination that the map for expansion has been not prepared. She does not know whether statement of account of the beauty parlour is produced on record or not. She further deposed that she is filing income tax returns but the same are not produced on record. Though she claimed that three persons are working in her beauty parlour, their names are not given. Most importantly, she deposed that she cannot state monthly income of her beauty parlour. The first appellate Court, therefore, raised doubt about capacity of said witness to justify the *bona fide* need for expansion of business. This evaluation of evidence by the trial Court cannot be said to be perverse, rather is appealing.

10. The petitioner no. 2 has also adduced evidence in terms of pleadings. However, the requirement of suit shop was for the benefit of petitioner no. 1 and the wife and sister of petitioner no. 2. It appears that petitioner no. 2 was in Government service and has taken voluntary retirement. In that sense, he is not connected with the businesses of petitioner no. 1 or that of his wife and sister. He is, therefore, not a right person to lead evidence on the *bona fide* need of the suit shop for the business of these three people. The first appellate Court has, therefore, rightly held that his evidence will not be of much significance.

11. The first appellate Court, while upsetting the finding of the trial Court on the proof of *bona fide* need of the petitioners, held thus :

“18] After careful consideration of the judgment under challenge and especially para-7 of it, I find that the learned lower court has observed that no proof with regard to the expansion of the business is produced on record by the plaintiff like account statement or income tax returns. The learned lower court has further observed that the witness no. 2 for plaintiffs Praveena Gotmare in her cross examination stated that she does not know whether the statement of account and income tax returns are produced on record or not. The learned lower court further observed that she is unable to say monthly income from the beauty parlour business. Even though observing all these things it appears that the learned lower court has answered the point of *bona fide* need in the affirmative only relying on the ruling in the case of Motor Cycle House and Metro Cottage Industries, Pune and another Vs. Kamalabai Dattatraya Kale and others reported in 2005(3) Mh.L.J. 1109.

19] I have carefully gone through the said ruling. No one can dispute the law laid down in it. It is true that the Hon'ble Bombay High Court in the above cited ruling has held that the landlord is the best judge of his own requirement for residential or business purposes and has complete freedom in the matter. However, it is further ruled that unless proved otherwise, the reasonable and *bona fide* need of the landlord, if supported by material evidence on record has to be respected. It is further ruled that the *bona fide* need or genuine need of the landlord of the landlord must not be a farce and/or a just cause to evict the tenant for other ulterior purpose. Therefore, the plaintiffs are not relieved from their obligation of establishing the fact that they require the suit shop for their reasonable and *bona fide* requirement. I have already discussed above as to how the evidence on record is not sufficient to prove that the plaintiff require the suit shop

for reasonable and bona fide use by the plaintiff no. 1 and the wife and sister of he plaintiff no. 2. Therefore, I find that the finding of fact as arrived by the learned lower court about the requirement of the suit shop by the plaintiffs is erroneous and not supported by any evidence on record. Therefore, I answer point no. 1 in the negative.”

12. I have gone through the finding of the trial Court on this point to find that the trial Court has indeed recorded this finding in favour of the petitioners on the basis only of the judgment of this Court in the case of ***Motor Cycle House and Metro Cottage Industries, Pune and another Vs. Kamalabai Dattatraya Kale and others [2005(3) Mh.L.J. 1109]***. This Court has crystallized the principles regarding *bona fide* need of the landlord. The Court held that landlord is the best judge of his own requirement for residential or business purposes and has complete freedom in the matter. The Court, however, further held that unless proved otherwise, the reasonable and *bona fide* need of the landlord supported by material evidence on record has to be respected. The first appellate Court has rightly held that the *bona fide* and reasonable need has to be supported by material evidence. Tenant in a given case may prove this aspect otherwise, in the sense, he may prove that the landlord is not in a reasonable and bona fide need of the premises. The first appellate Court has, therefore, rightly held that the petitioners are not relieved from their obligation to establish the fact

that their need is reasonable and *bona fide*. The evidence led was, however, not sufficient to prove this need. This finding is in tune with the above judgment.

13. On the point of hardship, the trial Court had noted that the decree, if passed in favour of the petitioners, greater hardship will be caused to the respondent. The first appellate Court has observed that since the petitioners failed to prove *bona fide* need, this issue does not survive. Despite such status, it has supported the findings of the trial Court on the count that petitioner no. 2 is financially well settled and has multiple source of income which are available at the disposal of his mother as well. As against, the respondent is running a grocery shop and is the only source of income for him and most of family members. Most importantly, the petitioners in the cross-examination of respondent have brought on record that it is he (respondent), who is in greater need of the suit shop than the petitioners. The petitioners having brought this fact on record in cross-examination of respondent, the issue of sufferance of greater hardship, if the decree is passed will have to be answered in favour of the respondent. Both the Courts below have, therefore, rightly taken a view in this regard in favour of the respondent.

14. Learned counsel for the petitioners has relied upon following judgments on the point of assessments of *bona fide* requirement of landlord.

- (1) *Gaya Prasad Vs. Pradeep Srivastava [(2001) 2 SCC 604]*,
- (2) *Hukum Chandra (dead) through L.Rs. Vs. Nemi Chand Jain and others [(2019) 13 SCC 363]*,
- (3) *Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LRs. [(1997) 4 SCC 413]*,
- (4) *Khandelwal Steel and Pipe Distributors Vs. Rajendra s/o Ganpatray Malhotra (deceased) L.Rs. Prashantlal wd/o Rajendranath Malhotra and others [2023(5) Mh.L.J. 495]* and
- (5) *Nilkanthrao Raghunthji Chute Vs. Dattatraya Narayanrao Balakhe [2019(3) Mh.L.J. 874]*.

15. The theme in the aforesaid judgments is that it is the statutory obligation on the Court to weigh and assess the comparative hardship from both angles. In the present case and as noted above, the petitioners have themselves brought on record that the greater hardship will be caused to the respondent, if the decree is passed in favour of the petitioners. There is thus hardly any scope left to consider any other factor that will outweigh the vital fact brought on record by the petitioners against them from the mouth of the respondent. Learned

counsel for the petitioners failed to show that in any of the aforesaid authorities, the Court has taken a contrary view despite there being such fact brought on record in the cross-examination of the tenant. None of the judgments, therefore, will be of any assistance to the petitioners – landlord.

16. The Courts below have rendered concurrent findings and is supported by sound reasons and, therefore, no interference is called in the writ jurisdiction. There is no merit in the petition. Writ petition is accordingly dismissed.

(Anil L. Pansare, J.)

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