



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

Writ Petition No. 166 of 2013

[Vijay s/o Ramkrushna Kulkarni ..vs.. Gopal s/o Tarachand Agrawal and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. V. Bhide, Advocate for the petitioner
Mr. R. L. Khapre, Senior Advocate a/w Mr. V. A. Lohia, Advocate for
respondent nos. 1 and 2
Mr. A. M. Kadukar, AGP for respondent no. 3

CORAM : ANIL L. PANSARE J.

DATED : 19-11-2024

The petitioner – tenant is aggrieved by judgment and order dated 30-7-2012 passed by the District Judge, Buldana in Regular Civil Appeal No. 14/2010.

2. Both the Courts below have found merit in the case of the respondents – landlords that they are in *bona fide* need of the suit premises.

3. Learned counsel for the petitioner has invited my attention to the law laid down by the coordinate Bench of this Court in the case of ***Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff & Others [2004(Supp.) Bom.C.R. 333]*** wherein the Court highlighted the obligation of the landlord in a case where he seeks eviction of tenant for *bona fide* need of premises. The Court held thus :

“8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed

against the tenant and to further disclose and explain that inspite of those acquisition and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be bona fide and reasonable.”

4. Thus, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises, which are capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that in spite of those acquisition and ownership of other premises, the requirement of *bona fide* need will survive. The Court further held that only upon discharging such obligation, the landlord would be entitled to invoke the ground of *bona fide* need and can succeed in establishing such need.

5. In the present case, the *bona fide* need as spelt out finds place in paragraph no. 4 of the plaint which reads thus :

“4).... That, the family of the plaintiff consists of five brothers and the plaintiff and his brothers are having sons. The present accommodation in possession of the family of the plaintiff is not sufficient for them. Some of the brothers of the plaintiff are not having their own business and the plaintiff wants to settle them and to start new business for his brothers. So the plaintiff requires the suit premises for his own use as well for the use of his other family members. Therefore the plaintiff doesn't want to continue the tenancy of defendant and wants to evict him. The plaintiff wants possession of the suit premises

from the defendant. The defendant is in possession of alternate accommodations.”

As could be seen, the pleadings are as vague as one could imagine. The landlord has not described the accommodation which is in their possession to let the Court understand whether it is sufficient or not for the purpose pressed in service. In fact the purpose is also as vague as it could be, in the sense the landlord has averred that some of their brothers are not having their own business and the landlord intends to settle them and also to start new business for their brothers. The nature of business is not disclosed. The names of brothers are also not disclosed. None of the brothers have been examined in support of the pleadings. Thus, it is unclear as to for what business and for whom, the suit premises are required. The fact that landlords own several premises is brought on record in their cross-examination.

6. Thus the landlord has not disclosed in the pleadings that he owned several premises and how the said premises cannot be utilized for the purpose of alleged business to be carried out in the premises. The landlords have further not disclosed as to how the purpose of carrying business could only be served through the suit premises despite availability of several premises. Having not done so, in my view, the landlords will not succeed in establishing the case of *bona fide* and reasonable need of the property.

7. At this stage, Mr. Khapre, learned Senior Counsel for the landlords argued that though the pleadings as required would not find place in the plaint,

the fact remains that these details have been brought on record through evidence and, therefore, the irregularity, if any, stood cured.

8. I do not find substance in the aforesaid contention. The obligation of landlord to disclose in the pleadings, the availability of other premises is something that is in nature of mandatory requirement. The landlords are not only duty bound to disclose the said fact but are required to lead evidence in support and to make out a case that despite availability of several premises, the requirement pressed into service can be achieved only through the premises sought to be taken in possession from the tenant.

9. Both the Courts below have failed to consider this vital aspect of the law and, therefore, committed error apparent on the face of record. The judgments are therefore not sustainable.

10. Writ petition is accordingly allowed. Judgment and order passed by the Principal District Judge, Buldana dated 30-7-2012 in Regular Civil Appeal No. 14/2010 as also the judgment and order passed by 2nd Joint Civil Judge Junior Division, Buldana dated 19-12-2009 in Regular Civil Suit No. 42/2006 are quashed and set aside. Regular Civil Suit No. 42/2006 is dismissed.

11. Pending civil applications do not survive and stand disposed of accordingly.

(Anil L. Pansare, J.)