



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO.994/2024 (REVIEW) IN
WRIT PETITION NO.5453/2023 (D)

Nirdoshkumar Radheshyam Chaurasia .Vs. M/s Saree Enterprises 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. V. V. Bhangde, Advocate for applicant.
Mr. S. V. Purohit, Advocate for non applicants.

CORAM : ANIL L. PANSARE, J.
DATE : DECEMBER 5, 2024

Heard Mr. V. V. Bhangde, counsel for the applicant and
Mr. S. V. Purohit, counsel for the non applicants.

2. Applicant – original respondent, is seeking review of the order dated 24.10.2024 passed by this Court in Writ Petition No.5453/2023. The writ petition was filed by the non applicant – tenant assailing order passed by First Appellate Court, which had set aside the order passed by Small Causes Court, which had dismissed the suit filed by the landlord seeking eviction of tenant for bona fide need. The Trial Court held that the landlord failed to prove bona fide need. The First Appellate Court, however, held otherwise and, therefore, the tenant approached this Court in writ jurisdiction.

3. The suit was based on the premise that the suit property is required by the landlord for occupation/business of ready-made garment for his son. The landlord, however, in cross-examination, deposed that he intends to give the suit property on tenancy for higher rent. Such an evidence being

fatal to the landlord's case, this Court held that the foundation of the suit has been destroyed.

4. There was yet another vital aspect that disentitled the landlord for relief. He deposed that on rear side of the building, new construction has been done, which includes ground floor, mezzanine floor and first floor. This fact, however, was not pleaded in the plaint nor was plaint amended (if construction was made pending suit). The landlord, however, led evidence to bring on record aforesaid facts to contend that the tenant refused to avail this alternate accommodation and, therefore, greater hardship will be caused to the landlord. This Court took a view that without pleadings the evidence could not have been led.

5. In addition, the tenant had relied upon the judgment of the Coordinate Bench of this Court in the case of **Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff & Ors [2024 (supp.) Bom.C.R.333]**, wherein the Court commented upon the obligations of the landlord in the manner.

"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 in spite 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."

6. Accordingly, it was held that the landlord ought to have disclosed in the pleading the fact that he owned other premises but were not capable of being utilized for the business of ready-made garments. It is worth mentioning here that the tenant was running a saree centre from the suit premises. The landlord offered alternate premises to run this business. It was, therefore, expected from the landlord to justify that if the business of saree can be run from the alternate premises why can't business of ready-made garments be carried on from the said premises. This query remained unanswered.

7. On the basis of above and considering the judgment of the Coordinate Bench in *Tarachand's* case, this Court took a view that it was necessary for the landlord to disclose in the pleadings the availability of the properties at his disposal and make out a case for bona fide need of a particular shop/premises out of the available properties.

8. Learned counsel contends that the judgment of Tarachand's case is *per incuriam* and, therefore, could not have been relied upon. He has placed reliance on the judgment of the Supreme Court in the case of **M. L. Prabhakar Vs. Rajiv Singal [(2001) 2 SCC 355]**. In the said case, the landlord had not mentioned about availability of two other premises but then material about the same was placed before the Rent Controller as well as the High Court and accordingly, it was held that no prejudice has been caused to the parties. The Supreme Court found that those two properties were not suitable for the need placed in service. In the aforesaid set of facts, the Supreme Court held that the landlord having another accommodation,

would not be fatal to the eviction proceedings, if both the parties understood the case and placed materials before the Court and case of neither party was prejudiced.

9. Similar view was taken by the Supreme Court in the case of **Ram Narain Arora Vs. Asha Rani and Ors. [(1999) 1 SCC 141].** The Supreme Court held that non disclosure by the landlord about he having another accommodation would not be fatal to the eviction proceedings, if both the parties understood the case and placed material before the Court and case of neither party was prejudiced. The Supreme Court held that the question of *bona fide* requirement is intermixed and thus the landlord having another reasonable suitable accommodation is good defence for the tenant but then further question would be whether that accommodation is more suitable than the suit premises and it would not solely depend upon the pleadings.

10. The argument of petitioner's counsel is that these judgments having been not considered by the Coordinate Bench, the law laid down is *per incuriam*.

11. I do not find substance in the aforesaid submission. The law laid down by the Coordinate Bench is just an extension of what has been held by the Hon'ble Supreme Court in the aforesaid two cases.

12. Firstly, there is no reason why should landlord not disclose about the properties available at his disposal. The bona fide requirement of the suit premises, to my mind, can only be tested when the details of the properties available for disposal of the landlord are placed on record. Maybe, that other

properties are not capable of utilizing for the requirement pressed in service but then this aspect can only be tested by the Court when details of all the properties are given like in the present case a question was posed as to if the business of saree could be run from the alternate premises why can't the business of ready-made garment be carried out from the said premises. There is no answer to this question and unless the answer is given, the *bona fide* need, as put forth by the landlord could not be ascertained. Thus availability of alternate premises is of relevance to decide the *bona fide* need and non disclosure of the same would definitely cause prejudice to the tenant. The Supreme Court has nowhere diluted the importance of having details of all the properties on record. What has been said is that non disclosure of properties would not be fatal to the eviction proceedings if both the parties understood the case and placed material before the Court. Thus, placing all the material before the Court is of extreme importance and in that context, the first responsibility will be of the landlord.

13. The Three Judge Bench of the Supreme Court in the case of *Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif & Ors, [1968 SCC Online SC 63]*, the Supreme Court, while dealing with the argument that it was not appellant's duty to produce document unless he was called upon to do so and onus was upon the other side to prove the case, observed thus:

"5.We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to

rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai v. Manickavasaka Pandara, Lord Shaw observed as follows:

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough - they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in Their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition....."

14. Thus, the Court held that it is not a sound practice to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy. The Supreme Court, held that adverse inference may be drawn by the Court against the party withholding important document or fact in terms of illustration (g) of Section 114 of the Indian Evidence Act, 1872, which provides that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

15. This judgment appears to have been not placed before the Hon'ble Supreme Court in the aforesaid two cases relied upon by the petitioner's counsel.

16. Thus, the practice of withholding evidence or fact which could throw light upon the issues, has been deprecated by the Supreme Court. In the present case, availability of other premises, would definitely throw light upon the issue of bona fide need and, therefore, the landlord ought to have disclosed the same in the plaint, particularly when the landlord came up with a plea that alternate premises, which was not disclosed in the plaint, was offered to the tenant who refused to utilise the same.

17. As such, counsel for the tenant has further relied upon the judgment of the Division Bench of this Court in the case of *Shantabai wd/o Shriniwas Sanghee thr. LRs. Vs. Akola District Central Cooperative Bank Ltd. and Ors., [2010 (6) Mh.L.J. 975,* to contend that the order passed contrary to the law of land amounts to error apparent on the face of record and can be reviewed, however, the counsel for the tenant has rightly countered the same by contending that even if presumed that the order was passed on the basis of the law laid down by the Coordinate Bench, which was later on found *per incuriam*, the order can be said to be an erroneous view but cannot be termed as error apparent on the record. It is so because there is a difference between the order passed contrary to law and order passed on the basis of law which was later on found *per incuriam*. One cannot say that the order passed by this Court was contrary to the law of land for the Supreme Court in the

aforesaid two judgments has ruled that all the material should be placed on record.

18. Further, nobody prevented the landlord from placing reliance on the aforesaid judgments, when the writ petition was heard. There is no explanation given by the landlord's counsel why these judgments were not submitted at the hearing of the writ petition.

19. Having not done so, the landlord cannot reargue the case under the garb of review and to place on record certain judgments which were not relied upon during the course of the arguments.

20. Even otherwise, this Court has dismissed the petition on other grounds as well and not only on the ground that the landlord failed to disclose all the properties. It cannot be, therefore, said that there occurred error apparent on record in the judgment sought to be reviewed. There is thus no merit in the application. The same is rejected. No order as to costs.

(Anil L. Pansare, J.)