

(1983) 07 BOM CK 0025

Bombay High Court

Case No: Writ Petition No. 2755 of 1982

Sunder Mansukhani

APPELLANT

Vs

Gobind Keswani

RESPONDENT

Date of Decision: July 7, 1983

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1)
- Constitution of India, 1950 - Article 227

Citation: (1984) 1 BomCR 262

Hon'ble Judges: C.S. Dharmadhikari, J

Bench: Single Bench

Advocate: K.A. Shah, for the Appellant; N.H. Gursahani and A.A. Irani, for the Respondent

Judgement

C.S. Dharmadhikari, J.

This is a writ petition by the tenant against the judgment and decree passed by the Small Causes Court, Pune and confirmed in appeal by the 7th Extra Assistance Judge, Pune.

2. The original landlord filed a suit for ejectment on the ground that the defendant-tenant has acquired suitable alternative residence and that the defendant is not using the suit premises for the purpose for which the same were let out to him for a continuous period of more than six months. The landlord also claimed possession of the suit premises on the ground that the defendant-tenant has committed acts which are contrary to the provisions of Clause (o) to section 108 of the Transfer of Property Act and that he requires the premises bona fide and reasonably for his own occupation. After appreciating all the evidence on record the trial Court held that the plaintiff has succeeded in proving that the defendant is not using the suit premises for a continuous period of more than six months and on other counts the trial Court recorded findings in the negative. However in view of the finding recorded on issue No. 2 the trial Court passed a decree for possession

and also directed the defendant tenant to pay Rs. 1500/- towards the arrears of rent. Being aggrieved by this judgment and decree the defendant tenant filed an appeal before the District Court. Before the District Court the landlord also canvassed contentions on which findings were recorded by the trial Court in the negative. After independently appreciating all the evidence the Appeal Court found that the plaintiff has succeeded in proving that the defendant-tenant has acquired suitable residence at Bombay, that he has not been using the premises for a continuous period of more than six months. The Appeal Court also found that the plaintiff requires the suit premises reasonably and bona fide for his own use and occupation and greater hardship would be caused to the plaintiff if the decree for eviction is not passed. In view of these findings the Appeal Court dismissed the appeal filed by the tenant and allowed the cross objections filed by the plaintiff. As already observed it is against these findings that the present writ petition is filed by the tenant.

3. Shri Shah the learned Counsel appearing for the petitioner-tenant contended before me that both the courts below committed an error apparent on the face of record that the tenant is not using the suit premises without reasonable cause for a continuous period of more than six months immediately preceding the date of the suit. According to him the defendant-tenant was required to go to America temporarily for resolving certain problems of his brother. He has left India for a short period and he intends to come back to India. In these circumstances it cannot be said that he is not using the premises for a continuous period of more than six months or in any case is not using it without any reasonable cause. According to Shri Shah his sister and his brother-in-law are using the premises off and on whenever they go to Pune and therefore the premises are in use. So far as the bona fide requirement of the landlord is concerned it is contended by the Counsel that the landlord has constructed a big bungalow in Delhi after his retirement. For construction of this bungalow he has raised loan of Rs. 75,000/- and has also used his provident fund amount and part of his pension. If after retirement a person chooses to invest such a huge amount for the construction of a bungalow then it is clear that he intends to settle at Delhi. Therefore the finding recorded by the Appeal Court is wholly perverse. He also contended that the Appeal Court was also wrong in coming to the conclusion that the tenant has acquired alternate premises at Bombay. The flat at Bombay is in the name of his brother-in-law who is residing there in his own right and therefore it cannot be said that he has acquired premises in Bombay.

4. On the other hand it is contended by Shri Gursahani that both the courts below, after appreciating all the evidence on record have recorded a concurrent finding of fact that the premises have not been used by the defendant-tenant without a reasonable cause for a continuous period of more than six months. So far as other grounds are concerned the Appeal Court after independently appreciating the evidence on record has recorded a finding of fact that the tenant has acquired alternate accommodation at Bombay and the landlord requires the premises

reasonably and bona fide for his own occupation. These being the findings of fact they are not open for challenge in a writ jurisdiction of this Court under Article 227 of the Constitution of India. In support of this contention he has placed reliance upon the decision of the Supreme Court in [Mrs Labhkuwar Bhagwani Shaha and Others Vs. Janardhan Mahadeo Kalan and Another](#), and the decisions referred to therein.

5. With the assistance of the learned Counsel appearing for both sides I have gone through the judgments of courts below as well as the material evidence on record. I have gone through the evidence since Shri Shah has contended that the findings recorded by the courts below are not based on any evidence and are therefore perverse. The defendant-tenant has not entered into the witness box since he was away in America. Shri Kishanchand Thadani who is related to the defendant-tenant is examined as his witness. In para 2 of his deposition he admitted that presently the defendant is in America. He has gone to America in the year 1978. It was not possible for the witness to say how long the defendant is going to stay in America. He also stated that the defendant's family consist of himself and his wife and both of them have gone to America. He was unable to state as to what was his address in America. The defendant's another witness, Bharat Bhusana Sada also could not say as to when the defendant is going to return to India. He has also stated in his deposition that he does not remember the defendant's address in America nor had he sent any reply to the letters received by him. The witness was examined on 21st July, 1980 and on that date also the witness could not state the exact date of his return. Therefore, this is a case where the defendant left India in the year 1978 with his family and even his address is not available with his kith and kin. It is not known as to whither he is gong to return to India. Shri Shah the learned Counsel for petitioner had to admit that at least till today the petitioner tenant had not returned to India. Thus for more than 5 years the petitioner-tenant is not using the suit premises. The story put up by the petitioner that his brother-in-law had off and on gone to Pune and had used the premises is rightly not accepted by the courts below. In these circumstances it cannot be said that the concurrent findings of fact recorded by both the courts below that the premises have not been used without any reasonable cause by the petitioner-tenant for a continuous period of more than six months, immediately preceding the date of the suit, is in any way wrong. To say the least I generally agree with the appreciation of evidence as well as the findings of fact recorded by the courts below in that behalf. In any case the said finding is not liable to be interfered with in the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India.

6. Once this finding is confirmed and it is held that the plaintiff was entitled to a decree for eviction on this Court then, it is not necessary to consider and deal with other contentions raised and argued before me.

In the result the petition fails. Rule is discharged. However, in the circumstances of the case there will be no orders as to costs.