(1960) 03 BOM CK 0017

Bombay High Court

Case No: Civil Revision Application No. 1427 of 1958

Dr. Vinayak Trimbak Wale		APPELLANT
	Vs	
Tarachand Hiralal Shet Marwadi		RESPONDENT

Date of Decision: March 8, 1960

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13, 9

Citation: (1960) 62 BOMLR 785

Hon'ble Judges: Gokhale, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Gokhale, J.

This is a revision application filed by the tenant against a decree passed by the Court of the Assistant Judge of East Khandesh at Jalgaon in Civil Appeal No. 395 of 1956 directing him to vacate the suit premises, of which he is a monthly tenant. The petitioner is a dentist and he has been in possession of the southern portion of the ground floor of Municipal House No. 299 in Baliram Peth, Jalgaon, in C. S. No. 2184/8, since 1939. The promises are being occupied by him partly for his residence and partly for his dispensary and the rent payable for the block is Rs. 27 per month plus permitted increases. The opponent, who is a resident of the village of Zurkheda in Taluka Erandol, purchased this house on. August 30, 1949. On July 2, 1955, the opponent gave a notice to the petitioner terminating the petitioner''s lease by the end of July 1955 on the ground that he required the promises in the occupation of the petitioner bona fide for his own occupation because he wanted to shift from Zurkhada to Jalgaon as dacoities were taking place in nearby villages and that his only son as well as his wife required medical treatment, and his daughter was to be educated and, therefore, it was necessary for him to shift to Jalgaon. As that notice was not complied with, the opponent filed Regular Civil Suit No. 421 of 1955 in the Court of the Second Joint Civil Judge, Junior Division, Jalgaon, on September 5, 1955,

to recover possession of the suit premises and an amount of Fti3. 160 for arrears of rent as well as future mesne profits and costs.

2. The suit was resisted by the petitioner on several grounds. It was alleged that though the rent of the premises was Rs. 27, after the purchase of the suit building by the opponent from the former owner Jaikisan Ramvilas, the opponent used to recover Rs. 40 from the petitioner and ultimately in 1955 Rs. 60 were recovered. The petitioner denied that the plaintiff required the suit premises for his personal use and occupation. Ho also urged that some blocks in the building had fallen vacant, but plaintiff gave them to others at increased rent, and, therefore, the plaintiff''s claim was not bona fide and reasonable.

3. The trial Court held that the plaintiff had failed to prove that he reasonably and bona fide required the suit premises for his personal use and occupation and, therefore, plaintiff was not entitled to possession. It also held that plaintiff was entitled to an increase at Rs. 3 per month and, therefore, passed a decree in favour of the plaintiff directing the defendant-petitioner to pay Rs. 105 in respect of arrears of rent and dismissed the plaintiff''s claim regarding possession.

4. Against this decree, the. opponent filed Civil Appeal No. 395 of 1956 in the Court of.the District Judge, East Khandesh, at Jalgaon, and the learned Assistant Judge, who heard the appeal allowed the same, holding that the plaintiff required the suit premises bona fide and reasonably for his own use and occupation. The lower appellate Court, therefore, directed the defendant-petitioner to hand over possession to the plaintiff by the end of September 1958 and passed a decree in favour of the plaintiff for Rs. 150 on account of arrears of rent and permitted increases and directed an inquiry into future mesne profits under Order XX, Rule 12(1)(c), of the Civil Procedure Code. It is against this decree that the present revision application has been filed.

5. Mr. Kotwal, learned advocate appearing on behalf of the petitioner, has contended that the learned appellate Judge has approached the question of the bona fide requirement of the plaintiff from a wrong point of view. It has to be mentioned that in the trial Court evidence was led on behalf of the petitioner to show that even after notice vacancies had occurred in the suit building, but plaintiff had rented the vaeant blocks to other tenants at higher rent. Evidence was led to show that one Mr. Gupte pleader, who was the tenant on the first floor, had vacated the portion of the first floor in his occupation from July 1955. It would appear that the learned trial Judge inspected the suit building and his inspection notes showed that the block occupied by Mr. Gupte Pleader was locked and was vacant. Taking into consideration this and other evidence, the trial Court came to the conclusion that plaintiff''s requirement of the suit premises for his own use was not bona fide or reasonable. The trial Court also held that on the evidence it would be the defendant who would be put to greater hardship if a decree for eviction was passed against him whereas the plaintiff would not be put to any inconvenience or hardship

if a decree for eviction was not passed in his favour. Now, it appears that the learned appellate Judge was of the view that the approach of the trial Court on the question at issue between the parties was not a correct approach, but what the Court had to consider was only whether the plaintiff'' reasonably and bona fide needed the suit premises at the date of the notice. In this connection, this is what the lower appellate Court observed:

The plaintiff gave one notice to one tenant only to vacate the premises. If, thereafter, some other tenants to whom such a notice was never given were to vacate the premises, then lit was not incumbent upon the plaintiff to occupy them. Plaintiff had a right to let out these promises to other tenants. If the plaintiff is charging higher rents to those tenants, it is a matter between those tenants and the plaintiff. Those tenants to whom higher rents are charged, according to the defendant, can take the matter to a Court of law and get the higher rent reduced to the standard rent of the premises.

in my view, Mr. Kotwal is right in his argument that the lower appellate Court has misdirected itself on the question of the plaintiff''s requirement of the suit premises for his personal use and has taken a wrong view of the relevant provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, to be hereafter referred to as the Bombay Rent Act.

6. u/s 13(f)(g) of the Bombay Rent Act, in so far as it is material, a landlord would be entitled to recover possession of any premises if the Court is satisfied that the premises are reasonably and bona fide required by him for occupation by himself. The burden would, therefore, be on the landlord to prove that the premises of which ha is seeking possession are required by him for occupation by himself reasonably and bona fide. The lower appellate Court seems to be of the view that it would be sufficient for the landlord in such a case to show that at the date when he gave notice he reasonably and bona fide required the premises and it is not necessary for the landlord also to show that that requirement of his continued even during the pendency of the suit. In my judgment, in order to satisfy the requirements of Section 13(1)(g) of the Bombay Rent Act, the landlord must establish to the satisfaction of the Court that his requirement of the suit premises for occupation by himself continued even during the pendency of the suit.

7. In support of his argument, Mr. Kotwal relied on Bhagwandas v. Kaikhushru (1920) 23 Bom. L.R. 287, in which the facts were as follows:-The landlord Bhagwandas gave a notice to his tenant in December 1917 to vacate the shop in possession of the tenant. As the notice was not complied with, the landlord filed a suit to eject the tenant on the ground that the shop was required by him since the Municipality had ordered a set-back of the house. The suit ended in a decree in favour of the landlord and the tenant was ordered to give up possession of the shop on or before July 31, 1918. In the meantime, on April 10, 1918, the Bombay Rent Act II of 1918 was placed on the statute-book. On the strength of this Rent Act, the

tenant applied for suspension of the decree and he secured the suspension for a period of ten months. When that period expired, the landlord applied to execute the decree, but the trial Judge ordered the execution of the decree to be stayed sine, die, as it appeared to him that the plea on which the landlord had sought to eject the tenant was not substantiated, and he considered that the plea of the landlord that he wanted the premises for his own use was belated. The landlord applied to this Court in revision, and it was held that the only question which the Court had to consider in such a case was whether at the time the landlord sought to eject a tenant he reasonably required the premises for his own use. As there was no finding on the point, the case was sant down to the trial Court to decide on the evidence whother the landlord could satisfy the Court that he reasonably required the suit premises for his own use, "at the present moment." It may be mentioned that u/s 9(2) of the Bombay Rent Act II of 1918, a landlord had a right to recover possession of any premises in occupation of a tenant if he reasonably and bona fide required them for his own occupation, a provision similar to the provision in Section 13(1)(g) of the present Act; and this-Court held that in such a case the landlord had to satisfy the Court that he reasonably required the premises for his own use at the time that he sought to eject the tenant. Mr. Kotval also drew my attention to an English decision reported in Benninga (Mitcham), Limited v. Bijstra [1946] 1 K.B. 58, where it was held that on a claim by landlords for possession of a dwelling-house, without proof of suitable alternative accommodation, on the ground that it is reasonably required by them for occupation as a residence for some person engaged in their whole-time employment, within the meaning of Schedule 1(g) to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, the material date on which possession is so reasonably to be required is that of the hearing. Both these cases support Mr. Kotwal''s contention.

8. In this connection, reference may also be made to Sub-section (2) of Section 13 of the Bombay Rent Act which, so far as is material, provides as follows:-

S. 13(2) No decree for eviction shall be passed on the ground specified in clause (g) of Sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenanl greater hardship would be caused by passing the decree than, by refusing to pass it.

In Shantaram Keshav Vs. Prabhakar Balwant and Another, . Mr. Justice Bavdekar held that the word "decree" in Section 13(2) of the Bombay Rent Act means the decree for eviction which is passed by the trial Court and, therefore, the time at which the availability of the accommodation either to the landlord or tenant, which has to be taken into consideration u/s 13(2) of the Act, is the time when the trial Court is about to pass the decree for eviction. This principle must equally apply u/s 13(I)(g), of the Bombay Rent Act. In order that a landlord should become entitled to recover possession of any premises on the ground of reasonable and bona fide

requirement u/s 13(1)(g), the Court has to be satisfied that the premises are reasonably and bona fide required by him for occupation by himself. When the landlord gives notice seeking to terminate the tenancy of the tenant on that ground and flies a suit for possession, it is not only essential for him to show that at the date when he gave notice he reasonably and bona fide required the premises for his own occupation, but that his need continued even pending the hearing of the suit. The trial Court''s satisfaction on this point must relate to the period of the hearing of the suit itself and the passing of the decree, and cannot be confined to the date of the notice.

9. Mr. Gupte, learned advocate appearing on behalf of the opponent-landlord, contends that even assuming that the test applied by the lower appellate Court was not the correct test, the finding given by that Court that the plaintiff required the suit premises reasonably and bona fide for his own use is a finding of fact and cannot be interfered with in revision. In my view, this argument cannot be accepted because it is clear from the judgment of the lower appellate Court that it proceeded to examine the evidence in the case on the basis that what the plaintiff had to establish was that, at the date of the notice, he bona fide and reasonably required the premises for his own occupation, and subsequent vacancies in the building of which he did not take advantage would not affect the question in any manner. It is clear from the record that one Vasant Bhikaji who was occupying one room and veranda on the ground floor of the suit house at a rent of Rs. 10 was evicted through a suit, and, in execution of the decree obtained against him, plaintiff got possession of the room and verandah from him in December 1954. It is true, as the learned appellate Judge has observed, that at that time there was no dacoity in the villages near about Zurkheda and there-fore it might be that plaintiff did not feel apprehensive regarding the safety of his family in December 1954. But plaintiff''s own evidence shows that there was a dacoity in Sheri and Bhokar, two villages near Zurkheda, in 1955, and the evidence on record also shows that the room and the verandah on the ground floor vacated by Vasant Bhikaji as well as one room on the upper floor were let out to one Kanakmal Ramdas by the plaintiff in November 1955 at a rent of Rs. 20 per month. It is clear from the notice given by the plaintiff on July 2, 1955, that plaintiff was feeling apprehensive about the safety of his family because of dacoities in the villages round about. But if that was really so, there was no reason why plaintiff should not have occupied the room and the verandah which was vacated by Vasant Bhikaji and also one other room on the upper floor all of which were subsequently let out to Kanakmal Ramdas. It would also appear that one Gupta Sub-Registrar vacated one block in the suit building in January 1955 and it remained vacant up to April and May 1955. Subsequently, this block was split up into two tenaments and one was let out to atenant at Rs. 15 per month and the other to one Kawadia at Rs. 20 per month. The learned appellate Judge has observed that plaintiff was not bound to occupy this block vacated by Sub-Registrar Gupte which was lying vacant up to 1955 because no dacoities had taken place in the villages up

to May 1955. In my view, the learned Judge was not justified in imagining things in the absence of any reliable evidence in the record. It also appears that another block occupied by one Bhaskar Vasudeo paying Rs. 5 per month was let out by plaintiff to one Panvala for Rs. 12 per month. It may be that this was not sufficient for the purpose of the plaintiff. But in my view, the lower appellate Court was wrong in criticising the learned trial Judge in taking this instance also into consideration on the question as to the bona fide requirement of the landlord. It also appears that one Mr. D.S. Gupte pleader left one block on the upper floor of the suit building after June 30, 1955. It is true that neither Mr. Gupte pleader nor his clerk N. S. Kiilkarni were examined; but there is evidence on the record to show that Mr. Gupte pleader had written to the Electricity Company at Jalgaon to remove the meter and to adjust his electricity bill from the deposit kept by him, and he had paid rent to the landlord up to June 30, 1956, only. The learned Judge, it appears, was under the impression that Mr. Gupte pleader had paid rent up to June 30, 1955, only, whereas the notice was given to the defendant on July 2, 1955 There is, however, no dispute that Mr. Gupte pleader had paid rent up to June 30, 1956 and the present suit, was filed on September 5, 1955. As already stated, the learned Judge of the trial Court visited the suit premises and his inspection notes would indicate that the block of Mr. Gupte Pleader was vacant while the suit was pending. There is no evidence on the record to indicate that at the date the trial Court decided the suit against the plaintiff, either Mr. Gupte Pleader was in occupation of that block or that plaintiff had let it out to some other tenant. In these circumstances, in my view, the trial Court was justified in taking this circumstance also into consideration in coming to the conclusion that plaintiff''s requirement of the suit premises for his own occupation was not a reasonable and bona fide one.

10. The result is that I must hold that the finding of the lower appellate Court that plaintiff required the premises reasonably and bona fide for his own occupation cannot be regarded as a finding of fact, because the appreciation of evidence on this point by the lower appellate Court was on the basis that it was not necessary for the plaintiff to show his bona fide and reasonable requirement at the time the Court was called upon to pass a decree for eviction. In my view, the trial Court''s finding that the plaintiff failed to prove that he reasonably and bona fide required the suit premises for hi3 personal use and occupation is justified in view of the evidence on the record, which has been briefly referred to above and which throws ample light on the conduct of the plaintiff.

11. On the question of balance of convenience under Sub-section (2) of Section 13 of the Act, the trial Court came to the conclusion that the petitioner would be put to greater hardship by passing a decree for eviction rather than the opponent. Admittedly the petitioner, who is a dentist, is a tenant of the suit premises since 1939. long before the opponent purchased the suit building. The portion of the ground floor which he is occupying as a tenant is being used by him partly for his residential purposes and partly for his own dispensary. It was in these

circumstances and in the light of the evidence on the record that the trial court held that the balance of convenience wouldbe in favour of the defendant and not the plaintiff. on this question, the lower appellate Court referred to a purshis that was filed on behalf of the plaintiff (exh. 14 in appeal) which showed that some other landlords were present in the appellate court on july 21,1956 and it was stated in the purshis that the house of nine landlord mentioned in the purshis were vacant. The purshis shows that only four of the landlords, were present while the other five landlords, mentioned in purshis were absent. The contents of the purshis do not justify the remark of the lower appellate Court that the landlords were present in Court to signify their consent to letting their houses to the defendant. Mr. Gupte, learned advocate appearing on behalf of the opponent, argues that this purshis would establish that there would have been no hardship on the defendant if a decree in favour of the plaintiff for possession was passed It would appear that the lower appellate Court has not properly considered this, question at all. This purshis was filed only in answer to a question by the Court to the pleader of the plaintiff as to whether plaintiff would be able to help the defendant to find suitable premises for his occupation. In my view it was wrong in law to admit additional evidence in this manager at the appellate stages. Besides what the Court has to consider u/s 13(2) of the Act is not whether the landlord would be able to find alternative accommodation for the tenant, but whether greater hardship would be caused to the tenant, if a decree for eviction was passed against him than to the landlord if no such decree were passed having regard to all the circumstances of the case including the circumstance of availability of other reasonable accommodation. There does not appear to be a proper consideration of and any clear finding on this point by the lower appellate Court. As already indicated the defendant has been a tenant of the suit premises since 1939 and the trial Court was justified in view of the circumstances, in coming to the conclusion that greater hardship would be caused to the defendant if a decree for eviction was passed against him and no hardship would be caused to the plaintiff if there was no decree for possession passed in his favour. The filing of the purshis (exh. 14) on the part of the plaintiff in the lower appellate Court would, in my opinion, go rather against the plaintiff. The plaintiff is a resident of Zurkheda and if, according to him, there are other houses. vacant in Jalgaon, the owners of which were willing to let them out to the defendant it would be easy for the plaintiff to get sufficient accommodation for himself at Jalgaon. even apart from this, however, I am of the view What the lower appellate Court was wrong in not considering properly and giving any definite finding on the question of comparative hardship as contemplated in Section 13(2) of the Bombay Rent Act. In my judgment the trial Court''s finding on this point is correct.

12. The result is that I must allow this revision application, make the rule absolute and set aside the decree of the lower appellate Court to the extent it awards possession of the suit premises to the plaintiff and directs enquiry into future mesne profits and proportionate costs. The petitioner will be entitled to his costs in this

revision application from the opponent. Each party to bear his own costs in the two lower Courts.