

(1976) 09 BOM CK 0024

Bombay High Court

Case No: Special Civil Application No. 4179 of 1976

Shivyogi Gurumurtippa Wale

APPELLANT

Vs

Santosh Jivraj Shah

RESPONDENT

Date of Decision: Sept. 8, 1976

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13
- Constitution of India, 1950 - Article 227
- Partnership Act, 1932 - Section 30

Citation: (1979) 81 BOMLR 42

Hon'ble Judges: Vaidya, J

Bench: Single Bench

Judgement

Vaidya, J.

The petitioner, Shivyogi Gurumurtippa Wale, is the tenant and respondent No. 1, Santosh Jivraj Shah, a minor, is the landlord of the suit premises, consisting of the ground floor of House No. 900, situate at West Mangalwar Peth, Sholapur.

2. The landlord filed Regular Civil Suit No. 43 of 1972 against Shivyogi, and Regular Civil Suit No. 45 of 1972, against Shivyogi's son, Sidramappa, who was the tenant on the first floor in the building bearing Municipal House No. 901 in the Court of the civil Judge, Junior Division, Sholapur, for recovery of possession on the ground that he required the suit premises for occupation by himself through his partnership firm in which the plaintiff was admitted to the benefits of the partnership as a minor.

3. On August 30, 1971, the houses were purchased for Rs. 16,000 in the name of the minor by his father Jivraj Shah. The defendants have been using the suit premises for the purpose of their retail cloth shop.

4. It was undisputed that the plaintiff Santosh was a partner in the two registered partnership firms viz. M/s. Pravinchandra Chandrakant Bhasme and M/s. Chandrakant Jivraj Bhasme. Both these firms were situate at Municipal House No. 903, West Mangalwar Peth, Sholapur. The landlord of that house filed Regular Civil Suits Nos. 569 and 571 of 1971 against both the firms. The suits were decreed, and the decision was confirmed in appeal.

5. Thereafter, adjustment took place between the landlord of House No. 903 and the partners of the above firms, and the above two firms were given time till January 31, 1976, to vacate the suit premises, and this time was further extended, upto July 5, 1976 as a result of a compromise between the parties in Darkhast Nos. 279 and 280 of 1976, and it is not in dispute that the plaintiff's firm lost possession of the premises where they were running the business in July 1976. The plaintiff, therefore, required the suit premises for running the business of the partnership firms in which he was admitted as a minor partner to the benefit of the firms.

6. The suits were resisted by the defendants on the ground that the plaintiff did not bona fide and reasonably require the suit premises for occupation by himself, within the meaning of Section 13(1)(g) and that greater hardship would be caused to the defendants if they are evicted from the suit premises.

7. The learned Joint Civil Judge, Sholapur by his common judgment and decree, dated January 30, 1976, decreed Regular Civil Suit No. 43 of 1972, by evicting the petitioner from the ground floor of the suit premises, and dismissed the plaintiff's suit No. 45 of 1972 with costs, so far as the first floor premises were concerned.

8. He came to the conclusion that the plaintiff reasonably and bona fide, required the suit premises on the ground floor for the business of the partnership, in which he was admitted as a minor entitled to the benefit of the partnership, following the decision of a Division Bench of the Madras High Court in [V. Danmull Sowcar Vs. Syed Ali Mohamed](#), and a decision of the Division Bench of the Nagpur High Court in *Firm Rajniklal & Co. v. Vithal Pandurang* [1952] A.T.R. Nag. 312.

9. He held that the business of the partnership in which the plaintiff was a partner will be the business of the plaintiff himself and for such business the plaintiff can claim possession of the premises from the tenants.

10. He also held that greater hardship would be caused to the plaintiff if a decree for eviction is not passed in his favour, as the landlord was likely to evict the firms from the premises where they were for the time being carrying on business observing, in para. 16 of his judgment, as follows:

From the decrees which are passed against the two firms, it is evident that those firms will be left with no premises of their own to carry their business after 31st January 1970. Whereas the defendant will be left with the first floor at least in the same building in case a Decree for possession of the ground floor is passed in

favour of the plaintiff. Apart from it, is also seen that defendant is a very rich person and "is capable of acquiring the properties in the business locality. He has admitted at Exh. 60 that on 5 12 1975 he has purchased one shop in the same locality for Rs. 23,000/- and if he gets the possession from the tenant he can shift his business to the said premises. Defendant S. S. Vale further admits that one another premises now in occupation of the tenant Prakash Naik was also purchased by him for his wife recently. Then he admits that he has also purchased third premises in that very locality for Rs. 7,000/-. The fourth property regarding which he has filed the suit for possession against the tenant is also purchased by him very recently. It is important to note that he purchased it for Rs. 26,000/-. All these purchases made by the defendant Shri S. S. Vale are subsequent to the filing of these suits. These circumstances clearly point out that both the defendants are very rich persons as compared to the plaintiff and, are in a position to acquire an alternate accommodation in the city. Their yearly turn over is more than 4 lacs as admitted by the defendant himself. Besides these properties, defendant Shivyogi was till recently a partner in the firm M/s. M.G. Birajdiar the net annual income of which is Rs. 14,000/- p.a. as seen from the Income Tax returns filed by the defendant himself. It has also come on record that the defendants possess agricultural lands in the Sholapur District. While deciding the question of hardship what the Court has to consider u/s 13(2) of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947, is not whether the landlord would be able to find alternate accommodation for the tenant but whether greater hardship would be caused to the tenant if a decree for eviction passed against him than to the landlord if no such decree were passed, having regard to all the circumstances including the circumstances of availability of other reasonable accommodation as held in [Dr. Vinayak Trimbak Wale Vs. Tarachand Hiralal Shet Marwadi](#), .

11. The judgment and decree passed by the learned Joint Civil Judge were upheld by the learned Assistant Judge, Sholapur, as he concurred in the views of the trial Court with regard to the requirements of Section 13(1)(g) read with Section 13(2). The concurrent findings of the two Courts below are challenged by the tenant in the above Special Civil Application under Article 227 of the Constitution of India.

12. The findings of the two Courts u/s 13(1)(g) read with Section 13(2) are essentially findings of facts based on full and proper consideration of the facts and circumstances as well as the evidence led by the parties. The two Courts below have correctly applied the law.

13. The power of superintendence of the High Court under Article 227, being extraordinary, is to be exercised most sparingly and only in appropriate cases. See AIR 1975 1297 (SC) . I, therefore, find that this is not a case where this Court will interfere with the findings recorded by the two Courts below.

14. The learned Advocate-General appearing for the landlord, submitted that the decisions of the Madras High Court and the Nagpur High Court are distinguishable

on the ground that, in the present case, the plaintiff was a minor partner who was not a real or working partner but was only admitted to the benefits of the partnership as can be seen from the certificate of registration at exh. 52, which shows that Jivraj, the father of the plaintiff was a partner in the firm of M/s. Chandrakant Jivraj Bhasme since its inception from February 1, 1960, till his retirement on November 5, 1964, on which date his son, the present plaintiff Santosh was admitted as a partner with effect from November 5, 1964 and he would attain his majority on December 26, 1978.

15. It is true that u/s 30 of the Indian Partnership Act, 1932 a person who is a minor, according to the law to which he is subject, may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership. After he is admitted to the benefits of the partnership, he will have pecuniary interest in the partnership business. The business is run subject to the condition that he is entitled to all the benefits though not its burden.

16. It must, therefore, be held that when a minor partner, who is so admitted to the benefits of the firm, files a suit for the recovery of the possession of his premises for running a partnership business, he reasonably and bona fide, requires the suit premises for occupation for himself as well as by all the other partners of the partnership firm.

17. With respect, the Division Benches in *V. Danmull v. Syed Ali* and in *Rajniklal & Co. v. Vithal Pandurang* have taken a correct view under the provisions of the relevant Rent and Accommodation Control Act, when they held with respect to the clauses similar to Clause (g) of Section 13(1) of the Bombay Rent Act, that the clauses did not require that the claim for eviction by the landlord should be for his exclusive business; and therefore reasonable and bona fide requirement for the partnership business in which the landlord was a partner would fall within the meaning of similar clauses.

18. Similar view was taken by Macklin J., in *Vallabhji Arjan v. Shamji Kalyanji* (1947) Civil Revision Application No. 255 of 1946, decided by Macklin J., on March 11, 1947 (Unrep.) an unreported judgment, when remanding the case to the trial Court observing as follows:

...The defendant says that the plaintiff, if he requires this godown at all, is requiring it not so much for himself as for the firm of which he is a member. I see no particular difference so far as the plaintiff is concerned. If he cannot get it for his firm, the plaintiff cannot get money out of his firm..

The above observations were made while calling for a finding from the lower Court on another point with regard to the requirement and hardship, with which we are not concerned here. After the finding called for by Macklin J. was received, Gajendragadikar J., as he then was, dismissed the revision application on "the ground that the finding of the lower Court with regard to requirement was a finding

of fact.

19. The learned Advocate-General, however, submitted that the above decisions are impliedly over-ruled by the decision of the Supreme Court in [D.N. Sanghavi and Sons Vs. Ambalal Tribhuwan Das](#), . He also referred to a recent unreported judgment of the Supreme Court, in Shantilal Thakordas v. Chimanlal Maganlal Telwala (1976) Civil Appeals Nos. 487 and 488 of 1976, decided on August 23, 1976 (Unrep) (Supreme Court), where the Supreme Court, inter alia, refrained from expressing any opinion on the question as to whether the words "occupation by himself would include occupation by the partnership firm in which the landlord is a partner.

20. So far as D. N. Sanghavi's case is concerned, the learned Advocate-General stated that the case laid down that in a suit for ejectment on the ground of need for continuing his business, it is necessary for the landlord to prove that the accommodation is needed directly and substantially for his occupation, and merely because the landlord required the accommodation for his partnership business, it did not fulfil the conditions of Section 12(1) (1) of the Madhya Pradesh Accommodation Control Act (41 of 1961) because having regard to the rigour of d. (f) of Section 12(1) of that Act the phrase "his business" should not receive a wide construction as to the class of persons who may be included in the possessive pronoun "his" in the phrase, for it would be against legislative policy.

21. The wording of Section 12(1)(f) of the Madhya Pradesh Act was, however, as follows:

that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his" major sons or unmarried daughters if he is the owner thereof or of any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;

22. The learned Advocate-General relied on the following observations in para. 10 (p. 1030):

The respondent has stated in his evidence that he and his two brothers are carrying on a partnership business in a rented shop in Siyaganj. He has further said that he needs the suit accommodation for that purpose. The appeal court has believed this evidence and has recorded the finding that the respondent bona fide requires the accommodation for his partnership business. But this finding does not fulfil the conditions of Clause (f) of Section 12(1) as construed by us. Unfortunately for him, the respondent did not lead any evidence to show that the accommodation was needed directly and substantially for his occupation by way of business. He filed the registration certificate showing that the partnership was registered with the Registrar of Firms. The certificate will only prove as to who are the partners of the firm, nothing more. The respondent did not file deed of partnership. It would have

disclosed whether the respondent is a mere sleeping partner or a partner who is entitled to manage the business either solely or with other partners, or that they are the sole managing partners. In his examination he has said that he was a partner in the firm. He has also said: "There is no proper accommodation for carrying on business in Indore by the members of his family." In cross-examination he has said, "In the members of my family there are two of my brothers Nand Kishore and Mani Lal, their wives and children and my mother are included. For our residence and running the shop we need the disputed shop." No doubt he has stated that he needs the suit accommodation for his residence also, but the lower courts did not examine the need for residence. Before the appeal court counsel for the parties had stated that the suit for eviction of the tenant should be disposed of only on the basis of Section 12(1) (f). The respondent thus abandoned his case based on Section 12(1) (e) which deals with residential accommodation. So we are concerned with his needful for business accommodation. The passage in his statement, earlier reproduced would seem to suggest that his notion of "his business" is inclusive of his brothers' business in which he may have no concern at all. So the possibility of his brothers' separate business being set up in the suit accommodation is not ruled out. However, we do not ground our judgment on this statement. In his evidence he has said; "We, the three brothers and father are the partners in the shop. There is no person from outside. Before the partnership my father used to run the shop (The father died during pendency of the suit)". He also said: "We deal in bidi, cigarettes, matches, tobacco and soap. We also want to have the same business in the disputed shop:" In neither of these two passages nor anywhere else in the evidence he has stated that on the terms of partnership he is entitled to manage the partnership business or even that he would also occupy the suit accommodation along with his partners on obtaining possession from the appellants. He has also not said that the other partners have agreed to shift the business." Para. 11 (p. 1031):

If the deed of partnership has excluded him expressly or impliedly from the management of firm's business and has made him a sleeping partner, it cannot be held that the accommodation is needed directly and substantially for his occupation by way of business. Nor he has power to shift the business. To sum up, for the reasons already given, his suit should fail.

23. The learned Advocate-General contended that even in the present case, apart from producing the certificate of registration, no evidence has been led on behalf of the plaintiff to establish that the minor or someone else on his behalf would be occupying the suit premises. Therefore, the learned Advocate-General contended that the mere fact that the minor was entitled to the benefit of the partnership firm was not sufficient to establish the requirements of Section 13(l)(g).

24. In other words, he submitted that even the occupation of the premises of the partnership firm was not sufficient to show that the plaintiff-minor required the suit premises for occupation by himself, within the meaning of Section 13(l)(g) as held by

the two Courts below and as held by the Supreme Court in the facts and circumstances of Sanghavi's case.

25. The argument of the Advocate-General has to be rejected in view of the evidence of Onkarnath Venkatesh Bhasme, a partner who is examined on behalf of the plaintiff and who said that the mother-guardian of the plaintiff was ill, and therefore, he was giving evidence on behalf of the plaintiff. He stated that the plaintiff had share of 45 paise and 7 annas in the partnership business which was carried on at House No. 903, West Mangalwar Peth, Sholapur from where the partnership firms were evicted.

26. He further stated that Jivraj, the father of the minor, died in 1972, and that the plaintiff and his mother were solely dependent on the cloth business which is their ancestral business and the plaintiff had no other source of income. He had also stated on oath that if the plaintiff is not given possession of the suit premises the business in which he is a partner will be closed down and he will have no source of income at all.

27. The evidence given on behalf of the plaintiff has been believed by the two Courts below who have held that in the circumstances that the minor plaintiff will be benefitted if the possession of the suit premises is given to the partnership firm to which the plaintiff is admitted. The questions were put to him in the cross-examination to suggest that the plaintiff had other sources of income; but the witness was not shaken in his evidence. The two Courts below have believed him and come to the conclusion, in the facts and circumstances of the case, that the occupation of the suit premises by the plaintiff firm would be an occupation by the plaintiff himself.

28. In my opinion, the finding is a finding of fact, and the observations of the Supreme Court in the Sanghavi's case cannot help the petitioner to persuade this Court to interfere with such a finding in the exercise of its extra-ordinary powers under Article 227 of the Constitution of India.

29. It is true that the Madras and Nagpur decisions deal with the case of adult partners and not with minor partners, but a minor partner can file a suit u/s 13(l)(g) and prove by proper evidence that he reasonably and bona fide requires the suit premises for occupation by himself as the partnership business in which he was a partner was being evicted from the premises where the business was being run in the present case.

30. The second point urged by the learned Advocate-General in support of this Special Civil Application was that the learned Assistant Judge was wrong in assuming that the defendant's father, Jivraj had no licence for carrying on business in the suit premises. The learned Assistant Judge undoubtedly referred to and relied on this fact while recording his finding on the issue of hardship, in para. 18 of his judgment. He observed:

. . . Again, as admitted by Sidram, there was no licence in the name of his father for the shop on the ground-storey, i.e. for the premises in Municipal House No. 900, In view of this, it appears that Municipal House No. 900 which was originally rented out to Shivyogi is now being used simply to stock the merchandise. The learned trial Judge believing in testimony of Onkarnath Bhasme held that Sidram was carrying on business on the upper storey, i.e. in Municipal House No. 901 only. He was, therefore, pleased to award possession of Municipal House No. 900 to plaintiff. I find that the discretion used by the learned trial Judge is indeed sound. Plaintiff has to accommodate two firms in altogether new premises and as is argued by Shri Valsagankar, if the firms are to be shifted to upper storey, the business of the firms would certainly be affected, because they would not be within the view of the customers.

31. The learned Advocate-General has referred to a licence issued under the Bombay Shops and Establishments Act, at exh. 92, which no doubt stands in the name of the son, Sidram, but which refers to the address as 900, West Mangalwar Peth. The learned Advocate-General, therefore, submitted that the reasoning adopted by the learned Assistant Judge is inconsistent with the record.

32. The argument has no merit because it was admitted before the learned Assistant Judge that the father Shivyogi had no separate licence at all under the Bombay Shops and Establishment Act. The learned Assistant Judge was, therefore, entitled to reply on that admission. There is nothing in exh. 92 to suggest that the licence in the name of the son is also the licence in the name of the father.

33. The reference to House No. 900 has reference to the first floor of that house where the son was running the business. In the circumstances, it cannot be argued by the learned Advocate-General that the finding recorded by the learned Assistant Judge about the hardship was inconsistent with the record.

34. The third and the last point urged by the learned Advocate-General in support of this Special Civil Application was that, having regard to the dismissal of the plaintiff's suit against the son, the learned Assistant Judge ought to have dismissed the suit against the father also as both of them were running their shop in the suit premises as well as on the first floor of the suit building, and greater hardship would be caused to the father if he is evicted from the suit premises and deprived of his business. This being a finding of fact could not be challenged by the learned Advocate-General before this Court exercising the powers under Article 227 of the Constitution of India.

35. He, however, submitted that the learned Assistant Judge ought to have taken into consideration the fact that if when the first floor is given to him hardship would be caused to the plaintiff, as retail business could not be carried on on the first floor, the same hardship would be caused to the petitioner also if he is deprived of the ground floor and hence u/s 13(2), no decree could be passed in favour of the

plaintiff.

36. The learned Assistant Judge has pointed out that the customers of the defendants were habituated to go on the first floor for their business, and this being a finding of fact no interference is possible in this petition under Article 227 of the Constitution.

37. Mr. Naik, the learned counsel appearing for the plaintiff-respondent makes a statement that if the defendant files a written undertaking in this Court to deliver possession on or before December 31, 1976, then the plaintiff will not proceed with the darkhast proceedings which are pending in the lower Court and which are stayed by this Court.

38. Accordingly, if the defendant gives a personal undertaking to this Court in writing within two weeks from today to deliver .peaceful and vacant possession of the suit premises to the plaintiff or to anyone on his behalf or on behalf of the partnership firm of which he is admitted as a partner and further undertakes not to part with the possession of the suit premises in any other manner, the stay granted by this Court shall continue till January 1, 1977.

39. If the said undertaking in writing is not filed in this Court as directed above within two weeks, the stay granted by this Court shall stand vacated and the decree shall be executed at once.

40. Rule is discharged with costs.