

(1982) 04 BOM CK 0039

Bombay High Court

Case No: Writ Petition No. 1212 of 1981

B.R. Tupkari

APPELLANT

Vs

Sushilabai P. Chikate and
Another

RESPONDENT

Date of Decision: April 28, 1982

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13, 25

Citation: (1982) 1 BomCR 719 : (1982) 84 BOMLR 376 : (1983) MhLj 62

Hon'ble Judges: Sharad Manohar, J

Bench: Single Bench

Advocate: M.D. Gangakhedkar, for the Appellant; Y.S. Jahagirdar, for the Respondent

Judgement

Sharad Manohar, J.

This is a writ petition filed by a tenant against a decree for eviction passed by the lower Appellate Court, setting aside the trial Court's decree of dismissal of the suit.

2. The error committed by the lower Appellate Court is of gross and patent character. I have no other alternative but to quash the said Court's decree and restore the decree of dismissal of the suit passed by the trial Court.

3. The facts relevant for the purpose of this petition are very few :---

The house in which the suit premises are situate belongs to the present respondent No. 1, who is hereinafter referred as the plaintiff. She herself resides in the said house in three rooms with her husband, who was a Lecturer or Professor in a college. He retired from the service in 1970. He has a son who admittedly, has been established in Pune as an Engineer, having his own accommodation there. There is no dispute that from the rear 1970, at least, the plaintiff has been in occupation of three rooms in which herself and her husband are living. It has come on record that apart from working in the college as a member of the staff, the plaintiff's husband

also was giving private tuitions in his house to the students. The defendant is a tenant in the said house and he has been in possession of two small rooms in the same. There was another tenant by name Killedar in one room thereof. We are not concerned with any other tenant in the house. It may be taken more or less established that the defendant who resides in the suit premises consisting of the two small rooms, has no financial capacity for paying larger rent at all than what he is paying for the suit premises, in which he is residing with his wife, a son and two daughters.

4. The instant suit, out of which the present petition arises, was filed by the plaintiff for the defendant's eviction on the ground that he required the two rooms for her husband for the purpose of giving tuitions to the students the defendant filed written statement and denied that the requirement of the was either bona fide or reasonable and he also contended that he would suffer greater hardships by decree for eviction against him than that would be caused to the plaintiff if no such decree was passed in her favour.

5. On these pleadings, issues were framed. However, while the said unit was pending, in the year 1979, the above mentioned tenant Killedar vacated the one room which was in his possession in the said house, which meant that number of room available for and in the occupation of the plaintiff and her husband rose to four. It will be seen that she wanted total number of 5 rooms, but she has already got four rooms having regard to the one vacated by Killedar.

6. It was on this background that the entire evidence was appreciated by the trial Judge and the learned trial Judge came to the conclusion that the plaintiff's requirement could not be said to be either bona fide or reasonable. He noticed the specific statement made by the plaintiff's husband who was examined as her only witness contending that tuition was just his hobby. The learned trial Judge noticed the fact that no where in the evidence, the plaintiff's husband contended that unless he gave tuitions their financial position would be precarious. In fact the contention that the suit premises were necessary for plaintiff to keep the wolf away from the door was something which was neither pleaded by the plaintiff nor was it deposed by her husband. The plaintiff did not examined herself at all. Even her husband nowhere stated that in the absence of the suit premises it would be impossible for them to make both the ends meet. The learned trial Judge took note of this evidence and hence came to the conclusion that the plaintiff's need cannot be said to be either reasonable or bona fide. He noticed that a decree for eviction would sent the pore defendant on the street because he was not in a financial capacity to pay rent higher than what he is paying for the suit premises since the fact that alternative accommodation would not be available except on exorbitant consideration could not be doubted at all. The learned trial Judge, therefore, held that greater hardships would be caused to the tenant if decree for eviction was passed against him, than would be caused to the plaintiff to case such decree was

refused. The suit for eviction was, therefore, dismissed by him.

7. In the appeal filed by the plaintiff, the learned Assistant Judge Solapur, totally overlooked the fact that as per the plaintiff's husband himself the profession of tuitions was not his source of livelihood at all on this own showing, he was given tuitions as a matter of hobby. However the learned Assistant Judge conjectured that since her husband had retired in 1970 and has taken no other occupation, his financial position must be precarious. He proceeded to assume further that in the absence of the additional tuitions which the plaintiff's husband intended to give, his financial position would be desperate. With such approach to the question, he held that the bona fide character of the plaintiff's requirement could not be doubted. On the question of comparative hardship, the learned Judge said that the tenant would be in a position to get alternate accommodation if he attempted strenuously in that direction. The learned Judge, therefore, allowed the appeal and passed a decree for eviction in favour of the plaintiff.

8. When this petition came up for hearing before me the first question I asked Mr. Jahagirdar, the learned Advocate for the original plaintiff was "what was his answer to the position arising out of the provision of section 25 of the Bombay Rent Act?" It was not disputed before me, that if the husband was to carry on tuitions in the suit premises, the use of the suit premises would be non-residential. u/s 25 of the Rent Act conversion of the premises to non-residential user is not only prohibited, but even a landlord allowing his tenant to convert the premises to non-residential user is deemed to have committed an offence. The said section 25 prohibits the landlord from using premises himself for non-residential user and prohibits from allowing tenant to put the premises to non-residential user. If this is the position, the normal view should be that no requirement of the landlord who, after recovery of the possession of the residential premises from the tenant, intends to convert them into non-residential user, can be said to be reasonable or bona fide. Plaintiffs plea has got to be rejected on this point itself.

9. However, Mr. Jahagirdar tried to contend that upon actual recovery of possession of the premises, they would form part of his own premises and since only two rooms out of the five rooms would be used for non-residential purposes, the dominant use of the premises then in existence would be residential and hence section 25 would not be contravened. I am not at all impressed by this argument. The purpose that were required to take into account is present purpose and at present the suit premises constitute one single unit and the landlord wants to get possession with a view to put that unit to non-residential user. Moreover, the view canvassed by Mr. Jahagirdar would defeat the very object and intendment of said section 25. If that is the position it cannot be said that section 25 would not be contravened by allowing the landlord to take possession of the suit premises for putting them to non-residential user.

10. Mr. Jahagirdar wanted to rely upon certain authorities in support of the above mentioned contention, but was unable to put his finger upon any. The authorities dealing with the question of the dominant user of the premises can have no bearing upon the proposition enunciated by him as above.

11. The other point on which the petition must succeed is that even on merits, the conclusion, arrived at by the learned Assistant Judge is unsupportable. The learned Judge seems to have proceeded on the assumption for that giving tuitions is the only string to the plaintiff's husband's bow for earning livelihood for the family of those two. The learned Judge has lost sight of the fact that no where in the plaint has the plaintiff even averred nor has her husband even disposed that the income to be derived from the loan given in the suit premises after possession of the same is recovered from the defendant, would go a long way for their sustenance. There is no averment any where even to the present income of the plaintiff and her husband. If the plaintiff and her husband are having other property and if they can happily live with the help of the same, it cannot be said that the income received by the plaintiff and her husband from the tuitions which he would additionally give would be of a particular necessity for plaintiff's family. Plaintiff's husband has not as much as whispered a word about his financial condition or about the present necessity to give tuitions. On the other hand, he has stated that he does not do it as an avocation, but only as a hobby. This aspect was very much appreciated by the trial Court and it was in view of that matter that the trial Court found that there is no present requirement for the plaintiff's husband to earn money with the help of the tuitions to be given to the students. The learned Assistant Judge was wrong in ignoring this crucial part of the plaintiff's evidence. Once it is held that giving tuitions is not an imperative for the plaintiff or her husband, then it cannot be said that the suit premises which will be used for the purpose of the tuitions would be "required" by the plaintiff or her husband. It must, therefore, be held that the plaintiff has totally failed to make out a case of reasonable and bona fide requirement of the possession of the suit premises.

12. Petition, therefore, must succeed. The decree of the Appellate Court is quashed and set aside and one passed by the trial Court is restored.

13. Rule earlier issued is made absolute. However, in the circumstances of the case, there shall be no order as to costs.