

**(1999) 02 BOM CK 0096**

**Bombay High Court**

**Case No:** Writ Petition No. 2231 of 1992

Art Wood Shop and another

APPELLANT

Vs

Shri J.B. Patil (Dead) through his  
heirs and legal representatives

RESPONDENT

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**Date of Decision:** Feb. 11, 1999

**Acts Referred:**

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1)

**Citation:** (1999) 2 ALLMR 324 : (1999) 3 BomCR 144 : (1999) 2 BOMLR 56 : (1999) 2 MhLj 482

**Hon'ble Judges:** T.K. Chandrashekhara Das, J

**Bench:** Single Bench

**Advocate:** Mohan Pungaliya, for the Appellant; H.S.S. Murthy, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

T.K. Chandrashekhara Das, J.

The petitioner is a tenant. He challenges in this writ petition, the orders passed by the courts below evicting him from the suit premises which is a shop at the ground floor of C.T.S. No. 358, Nana Peth, Pune. It was belonging to the respondent's father. During the pendency of the writ petition, the original petitioner No. 2 died and his legal heirs were impleaded in his place. Eviction of the petitioner from the suit premises was sought by the respondent's father, original plaintiff on the ground of arrears of rent, bona fide requirement and non user of the premises. Both the courts found that there are bona fide requirement and non user of the premises. However, the ground of arrears of rent has not been found favour with the plaintiff.

2. I heard Counsel for the petitioner Mr. Mohan Pungaliya and Mr. H.S.S. Murthy for respondents.

3. The learned Counsel for the petitioner relying on the evidence adduced in this case, submits that the conclusions arrived at by the courts below are erroneous and perverse. He argues that the original plaintiff has failed to prove bona fide requirement. The bona fide requirement pleaded and proved in this case is that the original plaintiff was staying in the first floor with family and on the ground floor he was running a printing press. The suit premises is adjacent to the road. According to original plaintiff, he had lost his eye sight and therefore, he had to depend upon his wife to run the printing press which contain several machineries. In order to find enough space to keep those machineries, he had to fill in closed the neighbouring wall. According to him, he requires more space for using the machinery. Therefore, he requires the adjacent room which is occupied by the petitioners' father for doing his timber business. It has been further the case of the original plaintiff that the premises was not being used by the tenant and it was remained closed for 10 years. As the iron sheets above the shutter of the suit premises has been rusted and no attempt was made to repair it. The electricity bills are kept in arrears for years together. According to the plaintiff, all these circumstances will go to show that there was cessation of user of the premises.

4. Elaborate argument was advanced on behalf of the petitioner taking me through the evidence led by the parties and tried to persuade me that there are no evidence or the conclusions that arrived at by the courts below. Counsel for the petitioner submits that those findings of the courts below are perverse warranting interference by this Court. I have gone through the evidence and I am satisfied that no interference is called for. It may be that in certain minor details, the lower Court might have committed certain errors, but that will not be sufficient for me to interfere in the findings of the Court below, as there is no failure of justice. For example, the learned Counsel brought to my notice Exh. 51/4 which was presented on behalf of the plaintiff for non user of the building. These documents are the electricity bills during the period from 17-2-1986 to 18-4-1986. Exh. 51/2 relates to the period from 17-6-1986 to 16-8-1998. The learned Counsel for the petitioner has argued that the suit was filed on 6-9-1986. Under the provisions of section 13(1)(k) of the Bombay Rent Act, the non user must be for a continuous period of six months preceding to the date of filing of the suit. In other words no user must be from 6-3-1986 and from the above exhibits it does come out that on 6-3-1986 shop is being occupied. By merely relying on Exh. 51/4 and Exh. 51/2 it cannot be said that requirement of the statute has not been fulfilled for the courts below to come to the conclusion that there is non user of the premises taking into account other circumstances. Taking into account the conduct of the plaintiff and the other documents produced it is revealed that the petitioner was not using regularly suit premises for doing business of timber. The tax assessment records will indicate that no business is carried out in that premises, as well there is oral evidence also adduced on behalf of the respondents i.e. P.W.3 who is trading in the opposite shop. He has deposed that the suit shop is always remain closed and the counter

argument set up by the petitioner is that the suit premises was closed during 12.00 to 4.00 p.m. and the opposite shop was opening only on those hours. It is submitted on behalf of the petitioner that his evidence cannot be accepted. However, on appreciation of evidence, both the courts have held that there was non user of the premises. I am not legally justified to reappraise this evidence and come to the different conclusion. I do not find any perversity in the findings of the courts below in reaching the conclusion that there is non user of the premises.

5. Heated arguments has been advanced by the Counsel for the petitioner accusing the courts below on the failure to consider the comparative hardship of the landlord and the tenant as envisaged by sub-section (2) of section 13 of the Bombay Rent Act. It is true that on examination of the judgement of the courts below, this aspect has been specifically discussed in their judgements. But it is discernible or demonstrable from both the judgements of the courts below that the courts have taken into account the comparative hardships of the tenant as well as landlord. Dwelling on this point, I have to consider certain circumstances disclosed in this case. In the plaint, the plaintiff has made an offer that the defendant can shift his trade to close by building situated in the same locality belonging to the plaintiff which is having road frontage and having no disadvantage in continuing the business of the tenant. The only objection raised in the written statement against this offer is that the room offered is a little smaller than the suit premises. It has come out in the evidence that the tenanted room is measuring within 200 to 300 sq. fts. The room which was offered was having measurement of about 250 sq. fts. Nature of the trade that is being carried out by the tenant is furniture making. The learned Counsel for the petitioner has vehemently argued that though there are evidence that there are rooms available for the plaintiffs, without attempting to occupy that room, the demand of vacating the petitioner's room is made in bad faith. Therefore the demand of the landlord was not reasonable and bona fide. As I indicated earlier, on the facts and findings entered by the Court below, it is found that the demand of the landlord is bona fide and also reasonable inspite of the fact that there are rooms available elsewhere belonging to the plaintiff. He has specifically pleaded and proved as to how his demand was bona fide. He says that because of the condition of eye sight and because of the nature of his business, he could not shift the parts of his machinery of printing press to the other room which was offered to the petitioner. Moreover he was to depend upon his wife for running the printing press who is staying just alone in the shop room.

6. The learned Counsel for the petitioner strongly argued that since the original plaintiff is no more, and as such the plea of handicap of plaintiff is no more relevant. He submits that this subsequent development has not been considered by the courts below, particularly, by the Appellate Court because the plaintiff died during the pendency of the appeal.

7. I have gone through the pleadings and examined the evidence. I can not see that by mere death of the plaintiff, the bona fide requirement of the landlord is erased. After the death of the plaintiff, his wife and daughters are running the Printing Press. They are residing on first floor. Printing press is right on the ground floor. They want to expand the business, as the printing technology is undergoing rapid change day by day. For that purpose, the just adjoining room is required. I find no bad faith in this need. At this juncture, attempt was made by the Counsel for the petitioner in citing the decision of the Supreme Court in [M.M. Quasim Vs. Manohar Lal Sharma and others](#), . In para 18 it has been held that the landlord is not the sole Judge of his requirements. This view of the Supreme Court has been expressed in the peculiar circumstances of the facts of that case. This view has undergone a sea change when the Supreme Court in Meenal Eknath Kshirsagar v. Traders & Agencies and another, reported in 1991 Mh.L.J. 121 has observed as under:

"It is for the landlord to decide how and in what manner he should live and he is the best Judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied him as a tenant or on any other basis is either insure or inconvenient it is not the courts to dictate to him to continue to occupy such premises."

8. I find no conflict and contradictions in the two views expressed by the Supreme Court. Both the views are relevant at the time it was made. Earlier, almost all courts take up the view that Rent Acts are the Legislations brought about for the protection of tenants from the vagaries of the landlord putting the tenants in the perennial threats of eviction. Therefore, courts are bound to take lenient view in favour of the tenants. But after working out the Rent Act for about half a century in the country, it brings out unanticipated consequences that no prudent landlord is willing to let their premises on rent. It is a fact that housing problem in this Court cannot be solved by the Government alone. A congenial atmosphere has to be created in the country that landlords having sufficient means and land, should construct the shelter and should be wilting to let them out to the homeless. Removal or easing out rigor of the Rent Law through out the country, requires necessary modification to achieve the national goal. As part of it, various States started bringing new regulations with regard to the relationship of landlord and tenant. Therefore, courts also have to change their approach according to the needs of the time. This change has been accordingly reflected in the above two views expressed by the Supreme Court. I find therefore, no conflicts in these decisions.

9. Apart from this view expressed by the Supreme Court in the facts and circumstances of the present case, I see that the plaintiff has shown his bona fide requirement. At the same time, by sheer obstinacy the tenant refuses the offer of exchange of the shop room made by the plaintiff. Non user of the premises and the refusal of the exchange of room by the tenant has persuaded me to hold that he was continuing this litigation as luxury and not for any genuine motives. He was not

using the premises for last 10 years, he has not accepted the offer made by the plaintiff in the plaint to exchange the room having no disadvantage. The only objection raised in the written statement is that it is little smaller than the suit premises. Excepting that plea set up in the written statement, no evidence has been adduced on behalf of the tenant as regard the measurement of the room. This conduct of the tenant clearly shows that he is only fighting the battle to spite the landlord. This is clear from the evidence which has come out that the tenant is running other three shops in Pune town itself. D.W.1 and 3 has admitted in their evidence that they are running the same timber business one at Nana Peth and others at Nehru Marg and therefore, D.W. No. 2 says that in Nehru Marg, the tenant was running two shops. This circumstances will go to show that the tenant was only launching a fight to see that the landlord shall not make use of the premises for the last 10 years. He was fighting the battle only as luxury. I have no hesitation to hold that the tenant is litigating for his tenement as luxury only to spite the landlord. Such tenant is not entitled to any protection under the Rent Control Act. The main object of bringing the rent legislature is to protect the tenants from the vagaries of the landlords that, they shall not throw away the tenant from their tenement at their whims and fancies. Therefore, the enactment clearly shows that the tenant who is genuinely in need of the tenement only is entitled for the protection under the provisions of the Bombay Rent Act. In this context, it is needless to say that the desire of the landlord to occupy his own room cannot be said to be unethical or unreasonable but it is only natural desire of an owner of the land. Rent Legislators put them under certain controls in the exercise of their property right that it cannot be exercised simply to throw out the tenant to the street on a fine morning particularly, when the shelters are in short supply in the cities of our country for the purpose of getting more rent. In the judgment in [M.M. Quasim Vs. Manohar Lal Sharma and others,](#), the Supreme Court has stated thus :

"It would, however, a bald statement unsupported by the Rent Act to say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate. To curb this very tendency the Rent Act, was enacted and, therefore, it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the same. The Court must understand and appreciate the relationship between legal rules and one of necessities of life shelter and the way in which one part of the society exacts tribute from another for permission to inhabit a portion of the globe."

10. From the above remarks of the Supreme Court, it recognizes how weak is the position of the tenants in the socio-economic background. In order to redress their grievances, Rent Act has been enacted. Undoubtedly, it is not for the tenant like

petitioner who is fighting against landlord for a luxury refusing to accept the offer made by the landlord for exchange of the room without having any prejudice. Nothing adverse was pointed out by the petitioner underlying in that offer.

11. In view of the aforesaid circumstances of the case, the contention of the learned Counsel for the petitioner that there is no consideration by the courts below on the comparative hardships of the landlord and tenant, cannot be accepted at all. As I indicated earlier, though specifically the courts below have not addressed requirement of sub-section (2) of section 13 of the Rent Control Act, in various terms the hardships of the tenant and landlord has been considered by the courts below before passing the impugned orders. I find that no grounds are made out for the interference by this Court in the decree of eviction granted by the courts below. Those orders are confirmed.

12. In the result, writ petition fails and the same is dismissed. No orders as to costs. Rule discharged accordingly.

13. Petition dismissed.