(1978) 12 BOM CK 0018

Bombay High Court

Case No: Special Civil Application No. 468 of 1974

Amritsingh Sardarsingh Suri and Others		APPELLANT
	Vs	
Khandrao Pandurang Aryamane and Another		RESPONDENT

Date of Decision: Dec. 6, 1978

Acts Referred:

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

Citation: (1978) 12 BOM CK 0018

Hon'ble Judges: M.P. Kanade, J

Bench: Single Bench

Advocate: Hemendra K. Shah, for the Appellant; R.T. Walawalkar, for the Respondent

Judgement

M.P. Kanade, J.
The legal representatives of the tenant have filed this Special Civil Application under Article 227 of the Constitution of India, challenging the judgment and order passed by the learned District Judge, Thane, on December, 11, 1973.

2. The landlord filed an application against the original tenant who was occupying a shed at Thane, ad-measuring 12'' x 12'' and was paying rent at the rate of Rs. 30/- per month. The tenant was inducted on the suit premises in the year 1952. He was also using the open space in front of the shed to the extent of 12'' x 6''. The landlord terminated the tenancy of the tenant by issuing quit notice dated December, 15, 1968, on the grounds of arrears of rent and also for bona fide and reasonable requirement of the suit premises for his own use and occupation.

3. The present suit was filed on February 13, 1969, bearing Civil Suit No. 73 of 1969 in the Court of the Civil Judge (Junior Division) Thane. The learned trial Judge after framing

issues and recording evidence adduced by the parties, came to the conclusion after hearing the parties, on appreciating of the evidence that the tenant had committed defaults for more than 6 months and the landlord-plaintiff had proved his reasonable and bona fide requirement of the premises for his use and occupation. The said judgment and order passed by the trial Court was challenged in the appeal before the District Judge, Thane, who by his judgment and order dated December 11, 1973, confirmed the findings recorded by the trial Court. Against the said judgment and order passed by the learned District Judge, on December 11, 1973, the present Special Civil Application is filed by the petitioners-tenants under Article 227 of the Constitution challenging the legality and correctness of the said Order.

4. Mr. Hemendra K. Shah, the learned Counsel appearing on behalf of the petitioners-tenants, submitted that the Appellate Court has not properly appreciated the evidence on the record on the question of bona fide and reasonable requirement of the landlord. Mr. Shah also contended that the landlord should prove the need, and the requirement must have an element of need and necessity in getting the suit premises. Mr. Shah also submitted that the issue as to comparative hardship has not been properly considered by the Appellate Court.

5. There is no substance in any of the above submission made by Mr. Hemendra Shah. There is a concurrent finding of fact arrived at by both the courts below. Both the courts below have considered the evidence and the material placed on the record. It is found by both the courts below that the landlord has a need as they had a very small garage and they bona fide required the suit premises for their business. It is true that expansion of business is not a ground for granting a decree of eviction in favour of the landlord under the provisions of section 13(1)(g) of the Bombay Rent Act. However, in the instant case the landlord has shown, by cogent and reliable evidence, that he had a genuine need of the suit premises for his own business. So far as the question of comparative hardship is concerned, the Appellate Court has taken into consideration all the material evidence produced on the record and compared the hardship of the respective parties and ultimately came to the conclusion that the refusal of decree in favour of the plaintiff will cause greater amount of hardship to the plaintiff.

6. Both the questions being questions of fact, this Court will not be justified in interfering with the findings of fact recorded by the two Courts below while entertaining an application under Article 227 of the Constitution. In that view of the matter, there appears to me to be no substance in this Special Civil Application.

7. At this stage Mr. Shah, the learned Counsel appearing on behalf of the petitioners, prays for time for vacating the suit premises. It is opposed Mr. Sawant appearing on behalf of the respondents. According to me, these are business premises and the petitioners may require some time to adjust their business somewhere else. Therefore, certain time would be necessary to vacate the suit premises.

8. If the petitioners file an affidavit and give an undertaking to this Court that they will not part with the possession of the suit premises and voluntarily deliver vacant possession to the landlord, time is granted to the petitioners to vacate the suit premises till 1st of June, 1979. The petitioners shall file an affidavit giving an undertaking to this Court within a weeks time from today, and in default the time given to the petitioners to vacate the suit premises till 1st June, 1979, will stand cancelled. The petitioners shall also deposit in the lower Court compensation on or before the 10th of each succeeding month till the end of May 30, 1979. In default, of deposit, as above, for more than two months, this concession will automatically stand rejected and the decree shall become immediately executable and landlord will be able to get possession of the premises forthwith.

9. In the result, the rule granted by this Court is discharged.

10. In the circumstances of the case, there will be no order as to costs in this Special Civil Application.