

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO.270 OF 2010**

Kumar Martand Lonkar. S/D by Heirs : ]  
1. Sou. Manda/Bebi Rajaram Farak and Ors. ] ... Applicants

Versus

Mr. Ratilal Pardeshi (Since Expired) ]  
by his Legal Representatives : ]  
1. Shri Raju Ratilal Pardeshi and Ors. ] ... Respondents

Mr. Madhav Jamdar for Applicants.

Ms. Kiran Bagalia i/b Mr. Krishna Kelkar for Respondent Nos.1 to 5.

**CORAM :- M. S. SONAK, J.**

**Judgment Reserved on :- JUNE 25, 2015**  
**Judgment Pronounced on :- JUNE 30, 2015**

**JUDGMENT :-**

1. This is the landlords' Revision Petition questioning the orders dated 10/08/2007 and 05/12/2009 made by the learned District Judge-6, Pune (Appeal Court) setting aside eviction decree dated 09/01/2007 made by the Additional Small Causes Court, Pune (trial Court).

2. The landlord had instituted proceedings for eviction against the tenant on the ground that the tenant is guilty of conduct

which is a nuisance or annoyance to the landlord as well as neighbouring occupants and further that the landlord and his sons required the suit premises reasonably and bonafide for the purposes of their own occupation. By Judgment and Order dated 09/01/2007, the trial Court did not accept the ground of nuisance but decreed the suit on the ground of reasonable and bonafide requirement. The Appeal Court, by Judgment and Order dated 10/08/2007, however, has reversed the trial Court. Further, by order dated 05/12/2009, the Appeal Court dismissed the Review Petition seeking review of order dated 10/08/2007. Hence the present Civil Revision Application.

3. Mr. Jamdar, learned Counsel for Applicants, at the outset, made it clear that the Applicants were not pressing the ground of nuisance or annoyance. Mr. Jamdar further submitted that the findings recorded by the Appeal Court on the aspect of bonafide requirement were vitiated by both illegality and material irregularity. In particular, Mr. Jamdar submitted that the Appeal Court, after accepting the position that the landlord is the best judge of his own need, has proceeded to completely ignore this principle and has virtually dictated, what in the opinion of the Appeal Court, is the best manner in which the landlord ought to carry on his business. Mr. Jamdar submitted that such an approach is erroneous and the orders impugned are vitiated on this score alone.

4. Ms. Bagalia, learned Counsel for tenants, defended the impugned orders by pointing out that the tenants are in occupation of

a small premises, through which they have been operating a sweet mart for last several years. Ms. Bagalia submitted that the Revision Petitioners have failed to establish any reasonable or bonafide requirement, particularly in relation to the suit premises which have road frontage and in any case, the hardship which will result, the tenants would far exceed in hardship which the landlords may occasion, if denied the eviction decree.

5. In view of the order which I propose to make, it would not be appropriate to advert to various other contentions raised by and on behalf of the parties. In my judgment, the impugned orders made by the Appeal Court are vitiated for failure on the part of the Appeal Court to apply the correct principles in matters of appreciation of evidence where eviction is applied for on the ground of reasonable and bonafide requirement. However, there are several other issues, which, in the facts and circumstances of the present case, were necessary for the Appeal Court to take into consideration. Accordingly, it may not be appropriate for this Court to itself appreciate the material on record and to rule upon the same one way or the other. Besides, the Revision Petitioners have filed Affidavit in this Court along with some material with a plea that the same be taken into consideration at this stage. Such plea, is not doubt opposed by Ms. Bagalia, the learned Counsel for tenants. All such matters, in the circumstances, can be gone into by the Appeal Court, which even otherwise is the last Court in the matter of record of findings of fact.

6. The error into which the Appeal Court has fallen, will be evident from the reasoning contained in paras 18, 19 and 20 of the impugned order dated 10/08/2007. In the said paras, the Appeal Court has observed that the landlord can carry out the expansion of their business by storing the goods and articles in some other room in the occupation of the landlord, which did not have a road frontage. The Appeal Court has devoted considerable space to the reasoning that the nature of the business which the landlord or his sons intend to carry out or expand into, does not require premises with a road frontage and that such business can very well be carried out by storing the goods in some other premises in the occupation of the landlord. The Appeal Court has further proceeded to hold that the tenants are carrying the business from the suit premises for number of years and accordingly have gained reputation and goodwill. If therefore, any decree of eviction is made, the tenants will suffer greater hardship than what would ensue to the landlord, in case decree of eviction is denied. The main theme of the reasoning however is that the nature of the business which the landlord or his sons intend to carry out, does not, in the opinion of the Appeal Court, require any road frontage and such business can very well be carried out from other premises in the occupation of the landlord.

7. The aforesaid reasoning and approach is obviously untenable. It is settled position in law that the landlord is the best judge of his requirement and has got complete freedom in the matter. The Courts have no concern to dictate the landlord as to how and in

what manner he should live<sup>1</sup>. This court has also held that it is well established in law that it is a landlord who has to decide regarding availability of accommodation, the type of accommodation and the convenience of his family members when he seeks to regain the possession of the rented premises and it is not the tenant who could dictate the terms<sup>2</sup>. These principles would equally apply in matter of commercial premises, as well. The Appeal Court has merely made reference to this principle in the impugned order, but in reality, failed to apply the same. This is quite evident from the reasoning reflected in the impugned order. On this short ground, the impugned orders are required to be set aside and are hereby set aside.

8. The reason for remand, is that it would be appropriate if the Appeal Court, upon application of the correct principles as aforesaid, re-appreciates the material available on record and returns finding on the aspect of reasonable and bonafide requirement. Further, it would be appropriate if the Appeal Court revisits the issue of comparative hardship, again by applying the correct test. Section 16 (2) of the Maharashtra Rent Control Act, 1999 ('said Act') in terms provides that 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 tenant, greater hardship would be caused by passing

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1 *Prativa Devi Vs. T. V. Krishnan* - 1996 (5) Supreme Court Cases 353

2 *Tulshiram Bhumayya Shriram & Ors. Vs. Akbarkhan Mujafarkhan & Anr.* - 2004 (3) ALL MR 279

the decree than by refusing to pass it. Further, where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of the part of the premises, the Court shall pass the decree in respect of such part only. The obligation to consider the issue of not merely comparative hardship, but also the issue as to whether a decree can be made in respect of only part of the premises, is upon the Court and particularly, in the light of material in the present case, such duty ought to have been discharged. There is material on record that during the pendency of the eviction proceedings, the landlord has recovered possession of some tenanted premises in the same building. The case of the landlord is that such premises were not suitable for business purposes. The suit premises are used by the tenants for both commercial as well as residential purposes. Eviction was applied for on the ground that the suit premises are required for commercial and residential purposes. In such circumstances, the issue of comparative hardship had to be considered in the said perspective and further, there was an obligation to also consider whether any decree could be made in respect of part of the premises. There are other issues raised by both parties, including issues arising out of the additional material attempted to be placed on record by the landlord and material placed by the tenants, in order to rebut the same. All these matters can be conveniently gone into by the Appeal Court, rather than this Court.

9. Accordingly, the impugned orders dated 10/08/2007 and 05/12/2009 are set aside. The matter is remanded to the Appeal

Court for fresh decision in accordance with law and in the light of the principles laid down by the Hon'ble Apex Court and this Court in assessing bonafide and reasonable requirement.

10. The Appeal Court should endeavour to dispose of the Appeal expeditiously and in any case within a period of 18 months from the date of production of authenticated copy of this order. The parties are directed to appear before Appeal Court on 14 July 2015 at 3.00 p.m. During the pendency of the Appeal, however, there shall be a restraint upon execution of the eviction decree made by the that Court. In the light of principles laid down in the cases of *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd*<sup>3</sup> and *State of Maharashtra and Another Vs. Supermax International Private Limited and Others*<sup>4</sup>, the tenant shall initially deposit before the Appeal Court an amount of Rs.5,000/- (Rupees Five Thousand Only) per month towards reasonable compensation. This determination is ad-hoc considering that premises are situated in Budhwar Peth area of Pune. Both the parties are at liberty to place material before the Appeal Court to assist the Appeal Court in determining the reasonable rate of compensation, which the tenants ought to deposit pending disposal of the Appeal. The first such deposit shall be made on or before 31/07/2015 and the tenants shall continue to make such deposits during the pendency of the Appeal subject to any variation in the amount as may be directed by the Appeal Court.

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3 (2005) 1 Supreme Court Cases 705

4 (2009) 9 Supreme Court Cases 772

11. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

12. The parties to appear before the Appeal Court on 14/07/2015 at 3.00 p.m. and produce authenticated copy of this order.

**(M. S. SONAK, J.)**