A DATTATRAYA LAXMAN KAMBLE

v.

ABDUL RASUL MOULIALI KOTKUNE AND ANR.

APRIL 28, 1999

B [S. SAGHIR AHMAD AND K.T. THOMAS, JJ.]

Rent Control And Eviction

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947—
C *Section 13 (1) (g)—***Bona fide** *requirement—Eviction of tenant—Landlord requiring premises for starting electrical business—He had diploma but had no experience—Trial Court did not order eviction—Appellate Court evicted tenant as it found the ground substantiated—High Court held, possessing a diploma is not enough, experience is needed—On appeal held, High Court*
D *committed jurisdictional error in interfering with finding of fact on an individual view—Order of Appellate Court, upheld.*

Provision couched in negative language to provide emphasis to genuineness of requirement—Requirement to be **bona fide** *needs to be reasonable also—Must be genuine from any reasonable standard.*

E **Bona fide** *requirement—Court to be satisfied—Landlord to prove need but no warrant to presume contrary—Undisputed claim by landlord—Independent analysis to be done—However landlords' burden may get reduced.*

F **Bona fide** *requirement—Landlord starting new business—Having no past experience but academically qualified—Held, does not reflect lack of bona fides—Sufficient know-how not a pre-condition.*

Words and Phrases—

G *"***Bona fide** *requirement"—Meaning of in the context of—Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.*

The appellant-landlord was the owner of a shop room, the tenanted premises. He desired to commence a business in electrical goods and had stated that he had obtained a diploma in Electrical Engineering, and had the
H **requisite know-how. He had instituted eviction proceedings against the**

respondent-tenant. The trial court did not order eviction however the appellate court evicted the tenant as it found the ground of *bona fide* requirement under Section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 substantiated.

The respondent-tenant filed a writ petition before the High Court, against the order of eviction. The High Court held that the appellant-landlord has failed to prove that he has the know-how required to start the said business and *bona fides* of the claim were not proved. The order of eviction was set aside.

Aggrieved the appellant-landlord appealed to this Court contending that the High Court held an erroneous view as regards requirements of starting a business; and that the High Court had ventured beyond its jurisdiction in upsetting a finding of fact entered by the fact-finding court.

Allowing the appeal, this Court

HELD : 1. The grounds mentioned in clause (g) of Section 13(1) of the Bombay Rent Control Act is couched in such a language to provide emphasis to the genuineness of the requirement by using the words "reasonably and *bona fide* required by the land lord". Both the terms (reasonable and *bona fide*) are complimentary to each other, as any unreasonable requirement is not *bona fide*. If the requirement has to be *bona fide* it must necessarily be reasonable also. The message to be gathered from these two terms used by the legislature is that the requirement must be really genuine from any reasonable standard. The genuineness of the requirement is not to be tested on par with the dire need of a landlord because the latter is a much greater need. [915-H; 916-A-B]

2. The landlord has to prove his need but there is no warrant for presuming that his need is not *bona fide*. The broad aspects should be looked into for satisfying the *bona fides* of the requirement. If there is any doubt, it is for the landlord to clear them. In the case of an undisputed claim of bona fide requirement an independent analysis has to be made; however this may reduce the landlord's burden. In an appropriate case, the requirement may be presumed to be *bona fide* putting the burden over the tenant to prove the contrary. [916-C-D]

3. It would be a fallacious and unpragmatic approach that any venture in business without acquiring past experience reflects lack of *bona fides* as

the same can be earned even while the business is in progress. It is too pedantic a norm to be formulated that "no experience no venture".

[917-C-D]

4. The High Court committed a jurisdictional error while upsetting a fact finding merely on an individual view on how to start a business venture. An order on this ground is unsupportable in law, hence liable to be interfered with and the same is set aside. [917-G]

5. The point that both the landlord, and the tenant have some other premises to shift their business was urged before the High Court, but it was not considered as the landlord had failed to establish his *bona fide* need. Now this point needs to be considered as the findings in the impugned judgment regarding the first point have been upset. The writ petition is remitted back to the High Court for disposal afresh on the remaining point. [918-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2489 of 1999.

From the Judgment and Order dated 20.3.97 of the Bombay High Court in W.P. No. 3764 of 1982.

M.D. Adkar, S.D. Singh and Vishwajit Singh for the Appellant.

V.A. Mohta, U.U. Lalit and Ms. Aprajita Singh for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted.

This litigation, even by now a quarter of a century old, shows fortune fluctuations as between a landlord and his tenant. The latest gainer is the tenant when the High Court of Bombay saved him from the peril of eviction. It is now the turn of the landlord and hence he challenged the judgment by filing this appeal by special leave.

In the year 1975, appellant-landlord spread his net so wide with multi-spoked grounds, as to catch the tenant by an order of eviction on the expectation that at least one of the grounds would click and the tenant could be evicted from a shop room situated at Solapur (Maharashtra). But the trial court found none of the grounds in his favour and consequently non-suited him. However, the appellate court, after testing all the grounds employed by

the landlord, found all of them but one, unsubstantiated. The one on which appellate court favoured the landlord was the ground envisaged in Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Act'). Resultantly the appellate court granted a decree for eviction with a rider that the tenant need vacate the premises only within four months. The appellate court passed the judgment on 30.8.1982.

The tenant very soon filed a writ petition in the Bombay High Court under Article 227 of the Constitution in challenge of the decree for eviction and got it stayed. It took 15 long years for the High Court to dispose of the writ petition as per the impugned judgment. A single judge of the High Court interfered with the finding on facts and held that the landlord has failed to prove the *bona fides* of his claim for requirement of the building to start a business therein. Learned Single Judge observed that the landlord has not proved that he has the know-how to do such a business.

Learned counsel for the appellant contended that the High Court adopted an erroneous view that a man can think of starting a new business only if he has experience in that business field. Alternatively learned counsel contended that the High Court has over-stepped its jurisdictional contours under Article 227 of the Constitution in upsetting a finding on fact entered by the fact finding court.

The relevant provision, under which a landlord can seek decree for eviction of his tenant for his own occupation of the building, is Section 13(1)(g) of the Act. It reads thus:

> "13. *When Landlord may recover possession.* (1) Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-
>
> (g) that the premises are reasonably and *bona fide* required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of public charitable trust that the premises are required for occupation for the purposes of the trust."

Sections 15 and 15A are not applicable in this case and hence we are not bothered about their implications. The grounds mentioned in clause (g) is couched in a language to provide emphasis to the genuineness of the

A requirement of the landlord by using the words 'reasonably and *bona fide* required by the landlord'. In fact both terms (reasonably and *bona fide*) are complimentary to each other in the context, for, any unreasonable requirement is not *bona fide*. Vice-versa can also be spelt that if the requirement has to be *bona fide* it must necessarily be reasonable also. But when the legislature employed the two terms together the message to be gathered is that the B requirement must be really genuine from any reasonable standard. All the same, genuineness of the requirement is not to be tested on a par with dire need of a landlord because the latter is a much greater need.

When a landlord says that he needs the building for his own occupation C there is no doubt he has to prove it. But there is no warrant for presuming that his need is not *bona fide*. The statute enjoins that the court should be satisfied of his requirement. So the court would look into the broad aspects and if the court feels any doubt about the *bona fides* of the requirement it is for the landlord to clear such doubts. Even in a case where the tenant does not contest or dispute the claim of the landlord the court has to look into the D claim independently albeit landlord's burden gets lessened by such non-dispute. In appropriate cases it is open to the court to presume that the landlord's requirement is *bona fide* and put the contesting tenant to the burden to show how the requirement is not *bona fide*.

In this case appellate court found that landlord's requirement to occupy E the building is to start a business in electric goods. The fact that landlord is a holder of diploma in Electrical Engineering was counted as a factor lending assurance that he would be genuinely contemplating such a business idea. Regarding the contention of the respondent tenant that landlord has not acquired practical experience in the business of electric goods the appellate F court has observed that it is not necessary in every case that the landlord should establish previous experience for starting a new business.

But the High Court took a different view. This is what the learned single judge of the High Court has said in the impugned judgment:

G "In order to establish that he is in a position to start the said business, it was necessary for the landlord to place material on record to show that he has the know-how necessary for starting business of sale of electrical goods. For considering, whether the landlord has necessary know-how to start the business of selling electrical goods only, the fact that he holds a diploma in electrical engineering, in my opinion, H would not be sufficient. It was necessary for the landlord to place

material on record which would show that either he has experience of the business that he proposes to start or that even though he has no experience of the business he has knowledge of the business sufficient to start the business of his own." A

Learned single judge opted to interfere with the fact finding only on the premise that in his opinion "if the landlord is really in a position to commence the business one of the ingredients that has to be established by the landlord is that he possesses the know-how necessary for doing the business." B

If a person wants to start new business of his own it may be to his own advantage if he acquires experience in that line. But to say that any venture of a person in the business field without acquiring past experience reflects lack of his *bona fides* is a fallacious and unpragmatic approach. Many a business have flourished in this country by leaps and bounds which were started by novice in the field; and many other business ventures have gone haywire despite vast experience to the credit of the propounders. The opinion of the learned single judge that acquisition of sufficient know-how is a pre-condition for even proposing to start any business, if gains approval as a proposition of law, is likely to shatter the initiative of young talents and deter new entrepréneurs from entering any field of business or commercial activity. Experience can be earned even while the business is in progress. It is too pedantic a norm to be formulated that 'no experience no venture'. C D E

That apart, appellant is not a total novice in the field of dealings in electrical equipment. The fact that the discipline in his academic specialization was Electrical Engineering is quite indicative of some knowledge he has in the subject, though a business in such commodities may have different phases. Learned single judge seems to have written him off as a person totally unfamiliar with any transaction in electrical goods. Such an angle is not a charitable view towards the landlord. At any rate there may be differing views for different people on how to start a business. The High Court has committed jurisdictional error in upsetting a fact finding merely on the individual view held by the learned judge about a business venture. We have no doubt that reversal of the appellate court order on the above ground is unsupportable in law and hence is liable to be interfered with. We do so. F G

But there is one point which the respondent-tenant urged in the High Court and which learned single judge avoided discussing on the premise that dislodgment of the appellant in the suit on one ground is enough. This is what the High Court said about it: H

A "In the present petition, the landlord has filed a civil application to point out that the tenant has some other premises where he can shift his business. There is a rejoinder filed by the tenant, disputing that statement of the landlord and it is pointed out that it is the landlord himself who has other premises available to him for starting his business. That fact is also disputed by the landlord by filing a rejoinder. However, since I have held that the landlord failed to establish one of the necessary ingredients for establishing that he needs the suit premises bona fide for his own business, it is not necessary for me to consider the Civil Application filed by the landlord."

C Now that point needs consideration by the High Court as we have upset the finding in the impugned judgment regarding the first point. Hence the writ petition has to go back to the High Court for disposal afresh. We therefore allow this appeal and set aside the impugned judgment and remit the writ petition to the High Court for disposal after deciding the remaining point referred to above.

D A.Q. Appeal allowed.