

Prabhavatiben Bhikhubhai Mehta

Vs

Shri Mahesh Kumar K. Sheth

Civil Appeal No. 6043 of 1990

(B.C. Ray, K. Jagannatha Shetty, J.S. Verma JJ)

06.12.1990

ORDER

1. Special leave granted. Heard arguments.
2. This appeal by special leave is directed against the judgment and order made on March 17, 1989 by the High Court of Gujarat in Civil Revision Application No. 218 of 1980 affirming the judgment of the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No. 180 of 1980 setting aside the judgment and decree for possession passed by the Trial Court in H. R. P. Civil Suit No. 5076 of 1976.
3. The appellant filed the suit being H.R. P. Civil Suit No. 5076 of 1976 in the Court of Small Causes at Ahmedabad for ejection of the tenant-respondent for bona fide requirement as her husband was going to retire from service in Bombay, the appellant wanted to settle down in Ahmedabad with her widowed daughter and other members of her family. The Small Causes Court decreed the said suit holding that the landlady had proved her bona fide personal requirement of the suit premises and that she would experience hardship greater than the tenant if the decree was refused. Therefore, the decree for eviction was passed against the tenant.
4. Against the said judgment and decree, the tenant filed an appeal being Civil Appeal No. 180 of 1980 before the Appellate Bench Of the Small Causes Court at Ahmedabad. The Appellate Court allowed the appeal and set aside the decree for eviction on the sole ground that it would cause greater hardship to the tenant if he is evicted. Against the said order, the landlady came before the High Court in revision. The High Court summarily dismissed the Revision Petition.
5. We have heard learned counsel for both the parties. We have also carefully perused the material on record and the judgments under appeal. It seems to us that the finding of the Appellate Court that the balance of hardship would be in favour of the tenant has been reached by taking into consideration irrelevant material. On the contrary the finding recorded by the trial Court in favour of the landlord on the question of hardship appears to be correct and sustainable. The Appellate Court having regard to the circumstances of the case ought not to have interfered with that finding of the trial Court.
6. We accordingly allow this appeal, set aside the judgment and decree of the appellate Court as well as the order of the High Court. We affirm the judgment and decree of eviction passed by the trial Court. We however, grant six months i.e. up to the end of June, 1991 for the tenant to vacate the suit

premises on furnishing the usual undertaking within four weeks from this date. The appeal is thus allowed. There will be no order as to costs.

Appeal allowed.

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