

Ramkubai Since deceased by Lrs.

Vs

Hajarimal Dhokalchand Chandak

Civil Appeal No. 329 of 1998

(V. N. Khare, S. S. Mohammed Quadri JJ)

13.08.1999

JUDGMENT

Syed Shah Mohammed Quadri, J. –

1. This appeal, by special leave, is directed against the judgment and order of the High Court of Judicature at Bombay in W.P. No. 362 of 1984 dated March 27, 1997. The appellants are the legal representatives of deceased landlady, Smt. Ramkubai, and the respondents are original defendant No. 1, Hajarimal Dhokalchand Chandak and the legal representatives of the second defendant Lalchand Dhokalchand Chandak (hereinafter they are referred to as 'landlady' and 'tenants').
2. The landlady filed civil suit, bearing Civil Suit No. 12 of 1975 in the Court of Civil Judge J.D. Igatpuri, against the respondent No. 1 herein and the said Lalchand Dhokalchand Chandak who died during the pendency of the proceedings, respondents Nos. '2A' to '2F' are his legal representatives, for recovery of possession of house bearing Municipal No. 138 and one of the rooms in house No. 150 within the Municipal limits of Igatpuri town (for short 'the suit premises') under Sections 12 and 13(1)(e) and (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Act'). Recovery of possession was sought on the following three grounds:
 - (1) the tenant committed default in payment of rent for the period, June 1973 to November 10, 1974;
 - (2) the first defendant sublet the premises to the second defendant;
 - (3) *bona fide* requirement of the landlady for personal occupation of her family.

The first defendant did not oppose the suit.

3. The second defendant contested the suit and denied all the grounds. It was pleaded that the first defendant and the second defendant were brothers and they constitute a joint family and that the premises was obtained by the first defendant for the family. The learned trial court found that all the grounds were established by the landlady and granted a decree for eviction of tenants. The tenants went in appeal before the Court of Assistant Judge of Nasik in Civil Appeal No. 138 of 1981. The Appellate Court found that there was no wilful default in payment of rent; there was no subletting of the premises and that there was no case of personal requirement of the landlady. However, it has held that there would not be any real hardship to the tenants if decree of eviction is passed on the ground that the landlady's requirement is *bona fide* and reasonable. In this view, the Appellate Court set aside the order of the trial court and allowed the appeal on September 28, 1983. The correctness

of that judgment of the Appellate Court was assailed by the appellants in the High Court of Bombay in Writ Petition No. 362 of 1984. The High Court confirmed the findings of the Appellate Court on all the grounds and dismissed the writ petition on March 27, 1997. It is from that judgment and order of the High Court that this appeal arises.

4. The only point canvassed before us relates to *bona fide* personal requirement of the landlady.

5. Mr. V.N. Ganpule, learned senior counsel for the appellants, contended that the landlady sought eviction of the tenants for personal requirement to establish a Kirana shop for her son - Bhikchand Jasraj Chordiya (for short 'Bhikchand') - which was her family business and that merely on the ground that her other son is carrying on Kirana business in one shop and she is a partner in the firm which is carrying on the business in the second shop, the plea for *bona fide* personal requirement was negatived by both the Appellate Court as well as the High Court.

6. Mr. V.A. Mohta, learned senior counsel appearing for the respondents, submitted that the reasons given by the Appellate Court and confirmed by the High Court are very cogent and the order under appeal is a just order which does not warrant any interference.

7. Since, the only ground urged for consideration is under Section 13(1)(g), it may be useful to extract that provision here:-

"13(1)(g). *When landlord may recover possession -*

(1) Notwithstanding anything contained in this Act [but subject to the [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 reasonable 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;"]

8. A plain reading of Section 13(1)(g) shows that the landlord is entitled to recover possession of any premises if he satisfies the court, *inter alia*, that the premises are reasonably and *bona fide* required by him for occupation by himself or by any person for whose benefit the premises are held. It is not disputed before us that the requirement of the landlady to set up her son Bhikchand in business falls under clause (g). What is contended is that the landlady does not *bona fide* require the premises to set up Kirana business for Bhikchand and that ground is a mere ruse to seek recovery of possession of the premises.

9. We have already noted above that the ground of *bona fide* requirement of the landlady was accepted by the trial court but it was negatived by the Appellate Court and the same was confirmed by the High Court. The Appellate Court was swayed away by the fact that the landlady herself did not come into the witness box to support her claim. What is not appreciated by the Appellate Court is that her son Bhikchand who was also her G.P.A. holder and for whose benefit the business is to be set up, did come into the witness box to support the case of personal requirement. The Appellate Court was of the view that the *bona fide* requirement is in the first place a state of mind and might be something more and that could be established only by the landlady. In all fairness to Mr. Mohta, we must note, that he conceded that reasoning of the Appellate Court could not be supported.

10. The second reason given by the Appellate Court is that at the time of filing of petition the son of the landlady was unemployed but later on he started doing work as a contractor in construction field, so he did not really want to run a Kirana shop in the suit premises. The Appellate Court was of the view that had he really intended to take up Kirana business he would not have started a business like that of a contractor. The third reason given by him is that the landlady was a partner, after the death of her husband, in the Kirana business run by her husband's brother. It was also noted that another son of the landlady is in possession of another shop and doing Kirana business and thus the family is engaged in doing Kirana business in two shops and if Bhikchand wanted to do Kirana business he could have joined existing business. From this the Appellate Court concluded that the landlady did not require the suit premises for establishing Bhikchand in Kirana business. The learned counsel for the respondents strongly supported these reasons. It is correct that Bhikchand was unemployed on the date of filing of the suit but he could not be expected to idle away the time by remaining unemployed till the case is finally decided. It has already taken about 25 years. Therefore, we do not think that taking up contractor work, in the meanwhile, will militate against his carrying on the business of Kirana which is his family business, which was carried on by his father and is being carried on by his brother independently. The facts that the landlady during her life time was a partner in the firm carrying on Kirana business and her elder son is carrying on Kirana business do not disentitle Bhikchand to establish his own business. We are not impressed by the other reasoning and conclusion of the Appellate Court which are confirmed by the High Court. In our view, none of the reasons leads to the inference that Bhikchand did not intend to start family Kirana business, so relief cannot be denied to the landlady to recover the suit premises for personal requirement of Bhikchand to establishment Kirana business independently.

11. The only other aspect which is required to be noticed is requirement of sub-section (2) of Section 13 of the Act. It enjoins the court not to pass decree for eviction under clause (g) of sub-section (1) if, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, it is satisfied that greater hardship would be caused by passing the decree than by refusing to pass it and if 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 a part of the premises, the Court has to pass the decree in respect of such part only.

12. In this case, the Appellate Court recorded the finding that the landlady will suffer greater hardship than the tenants if decree is not passed in her favour. This finding has become final and thus the requirement of sub-section (2) is also satisfied.

13. In this connection, it is apt to notice that Section 17 of the Act provides for recovery of possession of the premises by the original tenant in the event of the landlord not occupying the premises or re-letting the premises to any other person than the original tenant. Further, it also provides penal action against the landlord who violates the provision of clause (g) of sub-section (1) of Section 13. These provisions amply safeguard the interest and rights of tenants and prevent misuse of clause (g).

14. We are satisfied that the present appellants have established *bona fide* requirement to recover the possession of the suit premises from the respondents.

15. For all these reasons, we set aside the judgment and order of the High Court, under appeal, confirming the order of the Appellate Court and restore the order of the trial court in so far as it relates to the ground under Section 13(1)(g) of the Act. The appeal is, accordingly, allowed. There

shall be no order as to costs.