

SUPREME COURT OF INDIA

Mohd.Ismail

Vs.

Dinkar Vinayakrao Dorlikar

C.A.No...of 2009

(Tarun Chatterjee and Aftab Alam JJ.)

28.10.2009

JUDGEMENT

Tarun Chatterjee,J.

1. Leave granted.

2. This appeal is directed against the Judgment and Order dated 28th of September, 2006 passed by a learned Single Judge of the High Court of Judicature of Bombay at Nagpur Bench in W.P. (c) 5075 of 2005, by which the High Court had dismissed the writ petition and affirmed the order of the Additional Collector, Nagpur dated 22 nd of July, 2005, which was filed against the order of the Rent Controller, Nagpur in Revenue Case No. 264/A-71(2)/92-93 dated 12th of November, 1999 thereby allowing the 1 application of the respondent for grant of permission to issue quit notice under Clause 13(3)(vi) of the Rent Control Order, 1949.

3. The case made out by the respondents in his eviction petition may be summarized as follows:-

“The appellant is a tenant in respect of a Shop Room measuring about 10' x 26' (hereinafter referred to as "the shop in question") under the respondent for the last more than 20 years at a monthly rental of Rs.600/- payable at the end of each English Calendar month. In the application for eviction, the respondent had alleged that since he was jobless and had to maintain a family of ten members and had no source of income, he wanted to start a `kirana business' in the shop in question, in which business the respondent had sufficient experience and funds to start the same. It was further alleged that he and his three sons required two shops for his bonafide need.

Accordingly, the appellant was directed to vacate the shop in question and as he had failed to deliver possession to the respondent, the eviction proceeding was started against the appellant on the ground of bonafide requirement.”

4. The tenant/appellant appeared before the Rent Controller, Nagpur and contested the eviction proceeding by filing a written statement, in which he had denied the material allegations made in the application for eviction. It was specifically denied by the appellant in the written statement that the respondent bonafide required the shop in question as the respondent was already in possession of sufficient accommodation.

Accordingly, the appellant sought for dismissal of the eviction petition.

5. Parties adduced evidence in support of their respective claims and after taking oral and documentary evidence, the Rent Controller, Nagpur, by his order dated 12th of November, 1999 passed an order of eviction against the appellant.

6. Against the aforesaid order of eviction passed by the Rent Controller, Nagpur, an appeal was taken before the Additional Collector, Nagpur, which also affirmed the order of eviction passed against the appellant.

7. Feeling aggrieved, a writ petition was moved before the High Court of Bombay at Nagpur Bench which, by a final order, remanded the matter back to the Additional Collector for consideration afresh. After remand, the case was again decreed in favour of the respondent on the ground of bonafide requirement.

8. Again, a writ petition was filed against the aforesaid order of the Additional Collector, Nagpur before the High Court of Bombay at Nagpur Bench. During the pendency of the writ petition, it was brought to the notice of the Court that a similar eviction proceeding was started by the respondent against another tenant Mr. Lal Mohd. which was decreed and possession was taken from Lal Mohd. by the respondent and the respondent, thereafter, started using the same. This fact was in fact brought to the notice of the High Court and the High Court, having found it to be true, again remitted the case back to the Additional Collector, Nagpur, for consideration afresh but after the second remand, again the order of eviction was affirmed in favour of the respondent by the Additional Collector, Nagpur.

9. Against the aforesaid order of the Additional Collector, Nagpur, again a writ petition was moved by the tenant/appellant in the High Court of Bombay at Nagpur Bench. Again, by an order dated 16th of January, 2004, the High Court had partially allowed the writ petition and quashed the order dated 5th of November, 2003 passed by the Additional Collector, Nagpur and directed the Additional Collector to hear and decide the appeal afresh after affording an opportunity of being heard to the parties and permitted the respondent to file reply of affidavit filed by the appellant. It was further directed that the appeal shall be decided in the light of the law laid down by Bombay *Ramjiwan Agarwal*¹.

10. When the matter was remanded again by the High Court, the Additional Collector, Nagpur again dismissed the appeal by his order dated 22nd of July, 2005. Feeling aggrieved by this order of the Additional Collector, Nagpur, a writ application was moved before the High Court, which by the impugned Judgment was dismissed inter alia on a finding that the respondent had successfully proved his bonafide requirement of the shop in question and

against the said order of the High Court, this instant Special Leave Petition was filed, which on grant of leave, was heard in presence of the learned counsel appearing for the respondent only.

11. Unfortunately, at the time of hearing, the learned counsel appearing for the appellant was not present in Court to argue this appeal before us. Therefore, we were not benefited by the argument of the learned counsel for the appellant. However, we have heard the learned counsel for the respondent. In this appeal, in our view, the only question that needs to be decided is whether the concurrent findings as affirmed by the High Court in the writ application on the bonafide requirement of the suit premises by the respondent was duly proved or not. From the record, it appears to us that the appellant sought to argue that the bonafide need of the respondent of the shop in question was non-existent inasmuch as during the proceedings, the respondent had constructed two shops and the need pleaded by the respondent for starting a business for one of his sons, who is dead and another son being absconding, could not be accepted.

12. On the other hand, the learned counsel for the respondent before the High Court had urged that since the landlord/respondent was the best judge of his need and that he had produced material documents on the record that he had sufficient experience in Kirana business and that he had sufficient funds to do that business, the respondent had discharged the burden of proving that the respondent bonafide required the shop in question to start a business of Kirana in the shop in question. Accordingly, the learned counsel appearing for the respondent before us argued that in view of the concurrent findings of fact arrived at by the Courts below, this Court is not in a position to interfere with such concurrent finding of fact on the question of requirement of bonafide need of the landlord respondent until and unless it is found that the findings arrived at were perverse or arbitrary.

13. Having perused the impugned Judgment of the High Court and the orders of the Additional Collector and the Rent Contoller, Nagpur, and after considering the subsequent events that had occurred in the eviction proceeding, in which it was brought to the notice of the Court that (1) one of his sons had expired (2) Second son had absconded for the last 8-9 years and (3) he had constructed two shop rooms where he has been carrying on business of Kirana, no order for eviction could be passed without considering the aforesaid aspects of the matter which was duly brought to the notice of the Court.

14. Unfortunately, in spite of repeated orders of remand passed by the High Court as well as admissions made by the respondent in his deposition about the fact stated in the application for taking into consideration of subsequent events, it would not be possible for us to accept the impugned Judgment of the High Court, which had failed to consider the requirement of the respondent after the subsequent events had occurred namely (1) death of one son of the respondent (2) absconding of the second son of the respondent for the last 8-9 years (3) two shops having been taken possession of and (4) possession was taken from another tenant Lal Mohd. in which, the third son has been running a Leatho Machine Business.

15. In our view, although such admitted facts had not been considered by the Courts below, we do not propose to allow the appeal in full but remand the case back to the High Court, who in turn, would frame issues to the extent whether in view of the subsequent events, as stated herein earlier, the bonafide requirement of the landlord/ respondent has already been satisfied or not.

16. For this purpose, it would be open to the respondent to amend his pleadings of the eviction petition against which, additional objection may also be filed by the tenant/appellant.

“Thereafter, both parties shall be allowed to adduce evidence in support of their respective cases and to reach a final finding of fact on the question whether the case of bonafide requirement of the respondent was duly proved and such findings along with records and the evidence to be adduced for this purpose shall be transmitted back to the High Court, who will, after considering the evidence on record and the evidence that would be taken after remand along with the findings of the Rent Controller, finally decide whether the requirement of the landlord/respondent was satisfied by the occurrence of subsequent events either during the pendency of the appeal before the Additional Collector, Nagpur or before the High Court.”

17. For the reasons aforesaid, we set aside the Judgment of the High Court and send the case back to it for decision afresh in the light of the observations and directions made hereinabove.

18. The High Court shall direct the Rent Controller, Nagpur to complete the proceedings for taking up the matter, as directed, within three months from the date of supply of a copy of its order and the High Court, after receiving the records along with evidence and documents from the Rent Controller, Nagpur, and the findings made thereon, shall decide the same finally within three months from the date of receipt of the records from the Rent Controller, Nagpur, positively, without granting any unnecessary adjournments to either of the parties.

19. The impugned Judgment of the High Court is thus set aside and the appeal is allowed to the extent indicated above.

There will be no order as to costs.

¹[1975 MHLJ 746]