A FARUK ILAHI TAMBOLI & ANR.

v.

B.S. SHANKARRAO KOKATE (D) BY LRS. & ORS.

(Civil Appeal No.8648 OF 2015)

B OCTOBER 14, 2015

[JAGDISH SINGH KHEHAR AND R. BANUMATHI, JJ.]

Rent control and eviction:

C *Bonafide need – Tenanted shop measuring 9.7 sq. meters – Appellants-Landlords seeking eviction of tenanted shop on the ground that they need the shop for their own business – Plea of appellants that they were selling betel nuts and betel leaves in the open on the street and they* D *needed the shop in question which was most suited for their business – Plea of respondent-tenant that the appellants were in joint business with their father and uncle and do not require the suit shop – Held: The property owner has right to use his* E *property as he chooses, and if the appellants in the instant case had purchased the suit property, for running their own business, there is no irregularity therein, nor can there be any doubt about their bonafide desire to run the proposed business in the premises, independent of the other family* F *members – The premises measuring a mere 9.7 square meters would be most suitable for selling betel-nuts and betel-leaves – This is the usual size of the shops engaged in such business – Plea of tenant that appellants purchased another property measuring 105-7 sq. meters during pendency of the* G *eviction suit and same can be used by them – Said plea not tenable since a retail business of selling betel-nuts, bidi and tobacco etc. cannot be run from a premises as large as the one measuring 105-7 sq. meters and it is unlikely for customers to visit such a large premises for buying betel-*

H

leaves; betel-nuts and bidis etc. – The suit premises which measures 9.7 sq. meters would attract retailers of the trade under reference, as shops selling betel-leaves and betel-nuts are usually of the size of the suit property – Furthermore, respondent-tenant was running a grocery shop, had a separate business premises wherein he was having a bicycle-shop and, in addition thereto, he had agricultural lands and also a wine shop in partnership with his wife – Thus, even the comparative hardship would be that of the appellants, as against the respondents – Appellants entitled to eviction decree.

Allowing the appeal, the Court

HELD: 1. The fact, that the instant premises was purchased by the appellants on 06.09.1980 for a total consideration of Rs.10,000/- even though the same was earning a meager rent of Rs.36/- per month, is indicative of the fact, that the appellants had not purchased the premises for earning rent therefrom, but for the purpose of running a business therein. The assertion made by the appellants that they wished to sell betel-leaves and related articles in the premises, has not been seriously contested at the hands of the respondents. It was not the case of the respondents that any business activities were being carried out by the appellants independently, from their father and uncle, when the civil suit was filed. It certainly cannot be the claim at the behest of a tenant, that the owner of a premises must continue in business with his parents or relations, assuming there was a joint business activity, to start with. That is usual, and happens all the time when children come of age. And thereafter, they must have the choice to run their own life, by earning their own livelihood. The property owner has the right to use his property as he chooses, and if the appellants in the instant case had purchased the suit

A property, for running their own business, there is no irregularity therein, nor can there be any doubt about their *bona fide* desire to run the proposed business in the premises, independent of the other family members. The premises measuring a mere 9.7 square meters would B be most suitable for the business proposed by the appellants, namely, for selling betel-nuts and betel-leaves. This is the usual size of the shops engaged in such business. The affidavit placed by the respondents was to the effect that reference therein has been made C to a property admeasuring 114-2 square meters. This property was purchased by appellants during the pendency of the proceedings arising out of eviction suit. The affidavit itself indicates, that the premises is being used by the appellants to run a flour mill. Even if the said D factual position is accepted, it cannot be the case of the respondents, that the appellants can run their betel-nuts and betel-leaves business, from the premises which has a running flour mill. Thus viewed, the purchase of said property was inconsequential in respect of the present E controversy. The above affidavit further indicates, the purchase of property admeasuring 105-7 square meters by the appellants. This property was also purchased during the pendency of the proceedings arising out of F eviction suit.[Paras 13, 14] [1139-E-H; 1140-A-H; 1141-A]

2. A retail business of selling betel-nuts, bidi and tobacco etc. cannot be run from a premises as large as the one which admittedly measures 105-7 square meters. G It is unlikely for customers to visit such a large premises for buying betel-leaves, betel-nuts and bidis etc. The suit premises which measures 9.7 square meters would attract retailers of the trade under reference, as shops selling betel-leaves and betel-nuts are usually of the size H of the suit property. [Para 14] [1141-D-E]

3. Although, in the affidavit filed before the High Court, respondent No.1 made a reference to some of the properties which were used for business by his wife, he did not dispute the fact that he was running a grocery shop and besides that, he had a separate business premises wherein he was having a bicycle-shop and, in addition thereto, he had agricultural lands. It is also not disputed that the respondent was running a wine shop in partnership with his wife. Thus viewed, that the comparative hardship would be that of the appellants, as against the respondents. [Para 16] [1144-B-D]

Mattulal vs. Radhe Lal **1975 (1) SCR 127: (1974) 2 SCC 365;** *Hasmat Rai and another vs. Raghunath Prasad* **1981 (3) SCR 605: (1981) 3 SCC 103 – referred to.**

Case Law Reference

1975 (1) SCR 127	**referred to.**	**Para 11**
1981 (3) SCR 605	**referred to.**	**Para 12**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8648 of 2015

From the Judgment and Order dated 26.02.2010 of the High Court of Bombay in Writ Petition No. 2254 of 1993

Punam Kumari for the Appellants.

Chinmoy Khaladkar, Vimal Chandra S. Dave for the Respondents.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1.The petitioners-plaintiffs purchased the suit property bearing CTS No.2640/C

A in Barshi town, Barshi Taluka, District Sholapur, measuring 9.7 square meters, on 06.09.1980. At the time of purchase of the property, the ancestor of the respondent-defendant (who has since expired, and is now represented by his legal heirs) was occupying the suit property as a tenant. The contractual rent
B thereof was Rs.36/- per month. Having purchased the aforesaid property, the petitioners issued a notice to the respondent, intimating him about the change in title. In spite of receipt of the attornment notice, the respondent did not tender any rent to the petitioners for the period from 1980 to
C 1982. The petitioners then issued a notice dated 01.05.1982, demanding arrears of rent at the rate of Rs.36/- per month. Despite of the receipt of aforesaid notice, the respondent did not tender any rent to the petitioners. In fact, through a
D communication dated 10.09.1982, the respondent took a stand, that he had filed an application for fixation of "standard rent", and as such, till the aforesaid application was disposed of, no rent was payable by him to the petitioners. Insofar as the issue of non-payment of rent, and the prayer made by the
E petitioners in the aforesaid notice for eviction from the premises are concerned, the stand adopted by the respondent was that he was not a defaulter for a period of more than six months, and as such, the notice issued by the petitioners was invalid under the provisions of the Bombay Rents, Hotel and Lodging
F House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act'). The assertion that the respondent was not a defaulter for more than six months, was based on yet another factual assertion, that the respondent had paid a sum of Rs.180/- by cash to the uncle of the petitioners, whereafter the respondent
G was not in default for a period of more than six months.

2. Consequent upon the denial by the respondent to tender any rent, the petitioners filed Regular Civil Suit No.420 of 1982. In the aforesaid Suit, besides the plea of eviction based on
H non-payment of rent, the petitioners also claimed the premises for their reasonable and *bona fide* need.

3. The respondent contested the aforesaid Suit by preferring a written statement wherein he reiterated, that the rent was not payable by him to the petitioners till the fixation of "standard rent". It was also his claim, that an application for determination of "standard rent" was pending. He also undertook to pay all arrears of rent, as and when the aforesaid application was disposed of. It is not a matter of dispute that the respondent had impleaded the petitioners, in the aforesaid application (for fixation of "standard rent") and for all intents and purposes, the petitioners participated in the proceedings pertaining to the fixation of "standard rent". On the issue of eviction based on non-payment of rent, the stand adopted by the respondent was that he had paid a sum of Rs.180/- by cash to the uncle of the petitioners, and on account of the said payment, the notice issued by the petitioners seeking eviction of the respondent on the ground of non-payment of rent, was defective.

4. The Standard Rent Application No.80/1979 was finally decided on 16.10.1984. The Court fixed the "standard rent" at Rs.36/- per month, which admittedly was the same as the contractual rent payable by the respondent on account of the tenancy of the suit property.

5. The trial Court disposed of Regular Civil Suit No.420 of 1982, on 15.03.1989. The pleas raised by the petitioner were accepted. Dissatisfied with the order passed by the trial Court, the respondent preferred Civil Appeal No.187 of 1989 before the IV Additional District Judge, Sholapur. The IV Additional District Judge, Sholapur, disposed of the above appeal on 21.04.1993 by reversing the decision rendered by the trial Court. It is, therefore, that the petitioners-landlords approached the High Court by filing Writ Petition No.2254 of 1993. The said Writ Petition was dismissed on 26.02.2010, which has led to the filing of the present special leave petition.

A 6. Leave granted.

7. We have heard learned counsel for the rival parties.

8. Having given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for
B the rival parties, we are satisfied that no interference whatsoever is called for, on the claim of the appellants for the eviction of the respondents, on the ground of non-payment of rent. We, therefore, hereby affirmed the findings recorded by the IV Additional District Judge, Sholapur, as also by the High
C Court, on the issue of non-payment of rent.

9. The question that has engaged us while hearing the present controversy, pertains only to the *bona fide* need of the appellants, of property bearing CTS No.2640/C, which was
D purchased by the appellants on 06.09.1980. The aforesaid premises admittedly measures 9.7 square meters. The claim of the appellants was, that they needed the premises to run their own business. It was the assertion of the appellants, that at the relevant time, they were selling betel-nuts and betel-
E leaves, in the open on the street, and that, they needed the shop in question, which was most suited for the aforestated business. The claim of the appellants was disputed by the respondents,by asserting that the appellants were joint with their father and uncle, in residence as well as in business. It
F was the case of the respondents, that the father and uncle of the appellants, were running their business in CTS No.2640/A and 2640/B. It was pointed out, that they were also dealing in the business of betel-leaves, betel-nuts, bidys (Indian hand-rolled cigarettes) and tobacco etc. It was, therefore, the
G assertion at the behest of the respondents, that the plea of *bona fide* necessity was merely a trumped up plea, and was wholly unacceptable.

10.The repudiation at the hands of the respondents, was
H sought to be controverted by the appellants by asserting, that

they were not joint and that, there was no system of joint family amongst Mohammedans. The case set up was that amongst Muslims, there was no presumption of passing of joint family property to descendants. It was submitted, that even the ration cards of the appellants were separated from other members of the family in 1985 (even though admittedly the suit for eviction was filed in 1982). It was the contention of the respondents, that the father and uncle of the appellants were unwell, and in fact, the business of the father and uncle was being taken care of by the appellants. Besides the aforesaid, learned counsel for the respondents invited our attention to the fact, that an affidavit was filed by one of the legal heirs of the original tenant before the High Court, during the course of proceedings in Writ Petition No.2254 of 1993, wherein the following stand was adopted by the respondents:

> "7. I state that the Petitioners have also purchased the property bearing CTS No.3569/A after admission of the present Writ Petition. I state that the property bearing CTS No.3569/A is admeasuring 114-2 Sq.mtrs. and the Petitioners are running a flour mill in the said property. Hereto marked and annexed as Exhibit-'4' is the copy of the property extract of the property bearing CTS No.3569/A.
>
> 8. I state that the Petitioners after admission of the abovementioned Writ Petition on 29.4.1994 have purchased property bearing CTS No.3568/A, which is admeasuring 105-7 Sq.mts. I state that the said property bearing CTS No.3568/A is situated at less than 100 mtrs. from the suit property. I state that the Petitioners are carrying wholesale business of various goods including beetle leaves, cigarette and fire work items. Hereto marked and annexed as Exhibit-'5' is the copy of the property extract of the property bearing CTS No.3568A."
>
> (emphasis is ours)

A 11. In view of the factual position indicated in the affidavit extracted above, it was submitted by the learned counsel for the respondents, that the need of the appellants could not be considered to be *bona fide*. Additionally, it was pointed out, that on account of purchase of business premises during the B pendency of the proceedings, it was not possible to assume, that the *bona fide* necessity of the appellants was subsisting. In order to support his contention, learned counsel for the respondents placed reliance on Mattulal vs. Radhe Lal, (1974) 2 SCC 365, and placed reliance on the following observations:

C

"12. The question would still remain whether there were proper grounds on which this finding of fact could be interferred with by the High Court. It is now well settled by several decisions of this Court including the decision in SarvateT.B.'s case(supra) D and Smt. Kamla Soni's case(supra) that mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the court to determine the truth of the assertion E and also whether it is bona fide. The test which has to be applied is an objective test and not a subjective one and merely because a landlord asserts that he wants the non-residential accommodation for the purpose of starting or F continuing his own business, that would not be enough to establish that he requires it for that purpose and that his requirement is bona fide. The word 'required' signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must G show - the burden being upon him - that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business. The Additional District Judge did not misdirect himself in regard to these matters, as for example, by misconstruing the word 'required' or by H erroneously placing the burden of proof on the appellant and

no error of law was committed by him in arriving at the finding of fact in regard to the question of bona fide requirement of the respondent, which would entitle the High Court in second appeal to interfere with that finding of fact."

12. In addition to the above, learned counsel placed reliance on Hasmat Rai and another vs. Raghunath Prasad (1981) 3 SCC 103, so as to contend, that the events which transpired during the pendency of the proceedings, were liable to be taken into consideration for arriving at a final determination, whether the *bona fide* need of the tenant subsists, and it is only thereafter, that the eviction of a tenant can be ordered (based on the ground of *bona fide* necessity, raised by a landlord).

13. Insofar as the submissions advanced by the learned counsel for the rival parties are concerned, the first question that draws our attention is, whether or not the need of the appellants was *bona fide,* when the civil suit was preferred by the appellants on 10.09.1982. Having given our thoughtful consideration to the aforesaid issue, we are satisfied, that the fact, that the instant premises was purchased by the appellants on 06.09.1980 for a total consideration of Rs.10,000/- even though the same was earning a meager rent of Rs.36/- per month, is indicative of the fact, that the appellants had not purchased the premises for earning rent therefrom, but for the purpose of running a business therein. The assertion made by the appellants that they wished to sell betel-leaves and related articles in the premises, has not been seriously contested at the hands of the respondents. But then, were the appellants engaged in some other alternative business, at the time when the civil suit was filed? It was not the case of the respondents, that any business activities were being carried out by the appellants independently, from their father and uncle, when the civil suit was filed. It certainly cannot be the claim at the behest

A of a tenant, that the owner of a premises must continue in business with his parents or relations, assuming there was a joint business activity, to start with. That is usual, and happens all the time when children come of age. And thereafter, they must have the choice to run their own life, by earning their own B livelihood. The property owner has the right to use his property as he chooses, and if the appellants in the instant case had purchased the suit property, for running their own business, we find no irregularity therein, nor can there be any doubt about their *bona fide* desire to run the proposed business in the C premises, independent of the other family members. The premises measuring a mere 9.7 square meters, we are satisfied would be most suitable for the business proposed by the appellants, namely, for selling betel-nuts and betel-leaves. This is the usual size of the shops engaged in such D business.

14. The aforesaid determination, however, would not render a final decision in favour of the appellants, for the reason, that we would still have to determine whether the *bona fide* E need of the appellants was subsisting? It is therefore, that we will venture to deal with the affidavit placed on our record, by the learned counsel for the respondents, relevant extracts of which have been reproduced hereinabove. A perusal of the same reveals, that reference therein has been made to a F property bearing CTS No.3569/A admeasuring 114-2 square meters. This property was purchased during the pendency of the proceedings arising out of Regular Civil Suit No.420 of 1982. The affidavit itself indicates, that the aforesaid premises G is being used by the appellants to run a flour mill. Even if the aforesaid factual position is accepted, it cannot be the case of the respondents, that the appellants can run their betel-nuts and betel-leaves business, from the premises which has a running flour mill. Thus viewed, the purchase of property bearing H CTS No.3569/A is inconsequential insofar as the present

controversy is concerned. The above affidavit further indicates, the purchase of property bearing CTS No.3568/A admeasuring 105-7 square meters by the appellants. This property was also purchased during the pendency of the proceedings arising out of Regular Civil Suit No.420 of 1982. It was also submitted, that the instant property bearing CTS No.3568/A, is at a distance of merely 100 meters from the suit property. It is also the assertion of the learned counsel for the respondents, that the appellants are running wholesale business of various goods including betel-leaves, cigarettes and fire-work items, and as such, the instant premises could be put to use for the additional purpose, for which the suit premises is being claimed by the appellants. Even though the instant contention appears to be attractive, it is not possible for us to accept the same, because a retail business of selling betel-nuts, bidi and tobacco etc. cannot be run from a premises as large as the one in CTS No.3568/A which admittedly measures 105-7 square meters. It is unlikely for customers to visit such a large premises for buying betel-leaves, betel-nuts and bidis etc. In our view, the suit premises which measures 9.7 square meters would attract retailers of the trade under reference, as shops selling betel-leaves and betel-nuts are usually of the size of the suit property. We therefore decline the submissions advanced by the learned counsel for the respondents in this regard.

15. Having arrived at the above conclusion, it is imperative for us also to determine the question of comparative hardship between the parties. It was the submission of the learned counsel for the respondents, that they have no business premises other than the one in question to earn their livelihood, and that, if the respondents were to be vacated from the premises, they would be deprived of their entire livelihood. The submissions advanced by the learned counsel for the respondents, in our view, does not lie in his mouth specially on account of the factual position depicted in the findings recorded

A by the trial Court in paragraph 13 of the order dated 15.03.1989, which is being extracted hereunder:

"13. Now it has to be seen as to whom greater hardship will cause in case of eviction. The fact is on record that
B adjacent to suit property, there is property bearing C.T.S.No.2641 wherein the defendant is running grocery shop. So in case of eviction of defendant from the suit premises, there will not be much loss to the defendant as already he is in possession of some premises
C adjacent to the suit premises. No fact was brought on record that this premises C.T.S.No.2641 is not sufficient for him to run both business of grocery shop and paint. It was contended on behalf of the defendant that he will have to remain without food in case of his eviction from
D the suit premises. But this contention of the defendant appears to be baseless, because, the record shows that, the defendant has got agricultural lands, bicycle shop in the name of his son and also grocery shop being run in C.T.S.No.2641 adjacent to the suit property. Further the
E fact is on record that, the defendant is running wine shop in partnership. So all these circumstances are sufficient to infer that, the defendant will not be put to greater hardship in case he is evicted from the suit property, because there is alternative accommodation available
F for the defendant which is adjacent to the suit premises and there are other sources from which the defendant can earn and is earning. Much efforts were made on behalf of the defendants to show how the plaintiffs are
G economically sound. It was shown on behalf of the defendant that the plaintiffs are dealing the business of matador and for that he has examined witnesss Devdhar and Dhale. The witness Devdhar has stated that he was driver on the matador of the plaintiffs and the plaintiffs
H used to pay his remuneration.The witness Dhale has

stated that at one occasion he had obtained the vehicle of the plaintiffs on hire to proceed on journey. The sum and substance of the defendants contention appears that the plaintiffs are well to do. But even if for the sake of time being it is presumed that, the plaintiffs are dealing in business of matador, that cannot be linked with the need of plaintiff's suit premises, because in the matador the plaintiffs cannot run their business of betel leaves, bidy, cigarettes and other in which they desire to step. For this business only property like suit premises (is) required and matador will not fulfill that purpose. Therefore I am not inclined to rely upon the contentions of the defendant that he will suffer more loss in case of his eviction and that loss will be comparatively more the suit premises. Consequently, I am of the opinion that, more hardship will be caused to the plaintiffs if they are not put in possession of the suit premises because it will be as like to deprive plaintiffs from their right and enjoy their own property for their bonafide requirement. Fact has been admitted by the defendant that, the plaintiffs are well vertical in business of pan, bidy etc. It is for all the time contention of the defendant that, the suit property has been purchased by the plaintiffs, that the rent has been paid by him to plaintiffs, so all these callings by defendant to plaintiffs in relation to suit property shows that, suit property has been presumed by defendant as belong to the plaintiffs and in existence of these facts contention of the defendant cannot be accepted that there is alternative accommodation for plaintiffs to run their business in the premises of their father or uncle when it is not basic contention of the defendant that, the suit property has been purchased by the plaintiffs, their father and uncle jointly. In the result, I answer issue no.7A in the affirmative and issue no.7B accordingly."

(emphasis is ours)

A 16. The reason for us to rely on the averments recorded in paragraph 13 extracted hereinabove, emerges from the fact, that the factual position depicted therein, was not disputed by the respondents, in the affidavit filed before the High Court. Although, in the affidavit filed before the High Court, respondent B No.1 made a reference to some of the properties which were used for business by his wife Kusum Kokate, he did not dispute the fact that he was running a grocery shop in CTS No.2641, and besides the aforesaid, he had a separate business premises wherein he was having a bicycle-shop and, in C addition thereto, he had agricultural lands. It is also not disputed that the respondent was running a wine shop in partnership with his wife. Thus viewed, we are satisfied, that the comparative hardship would be that of the appellants, as against the respondents. D

17. In view of the above, we are of the view that the impugned orders passed by the IV Additional District Judge, Sholapur dated 21.04.1993, and by the High Court dated 26.02.2010, while disposing of Writ Petition No.2254 of 1993 E deserve to be set aside. The same are accordingly hereby set aside. The instant appeal is allowed. The respondents are directed to vacate the premises on or before 31.12.2015.

Devika Gujral Appeal allowed.