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Court : Mumbai Aurangabad

Decided On : Mar-13-2014

Judge : T.V. Nalawade

Appeal No. : Civil Revision Application No. 39 of 2014 & 170 of 2013

Appellant : imambi and Others

Respondent : Mohammad Ismail and Others

Judgement :

1) Both revision applications are admitted. Notices after admission made returnable forthwith by consent. Heard both sides for final disposal.

2) Civil Revision Application No.39 of 2014 is filed by the landlord and the other revision is filed by the tenant against the judgment and order of Regular Civil Appeal No.2/2012 which was pending before the learned Principal District Judge, Latur. The Rent Appeal was filed by the landlord against the judgment and order of Rent Controller, Udgir given in proceeding No.1979/RCA/3. The proceeding before the Rent Controller was filed by the landlord for eviction on the ground of default and also on the ground of bona fide requirement of the premises for personal use. the Rent Controller rejected the application. In appeal filed by the landlord, decision is given in favour of the landlord on the ground of default but the claim of possession on the ground of bona fide requirement for personal use of the landlord is rejected.

3) The proceeding before the Rent Controller was filed in respect of House No.3-3-32 and 3-3-34 situated within Municipal limits of Udgir, District Latur on the ground of default under section 15(2)(1) and on the ground of bona fide requirement for personal use under section 15(3)(a)(iv) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (hereinafter referred to as "the Act"). It is the case of the landlord that right from beginning the tenant did not pay rent and he committed default which was willful. He contended that he had filed suits for recovery of arrears of rent in respect of the period till the date of application made before the Rent Controller. Statutory notice was given by the landlord and on the second ground it was contended that the landlord wanted to start business in the suit premises. The proceeding was contested by the tenant by denying both the contentions.

4) Initially, the order of eviction was given by the Rent Controller in the year 1986. This order was set aside by High Court in Civil Revision Application No.424 of 1987 and the matter was remanded to give finding on the issue as to whether there was willful default. In the meantime suits filed by the landlord for recovery of arrears of rent came to be decided and the decision became final in Supreme Court. As per the decision, the landlord was allowed to recover arrears of rent for period 1971 to 1979.

5) The Rent Controller has held that though there was default, it cannot be called as willful. The discussion of the material given on the ground of bona fide requirement for personal use is not made by the Rent Controller. The learned Principal District Judge has held that the tenant was in the arrears for more than six years and it was willful default. However, the learned Principal District Judge has held that the landlord is not entitled to get possession on the ground of bona fide requirement as he has not shown that he was carrying on business at the relevant time as required by provisions of the Act.

6) Evidence given by both the sides and record like the decision given by the Apex Court in respect of rent recovery matter show that for about 8 years the tenant did not pay rent to the landlord. The tenant took defence that the plaintiff / landlord was not the owner of the property and he is not entitled to recover the rent. On the

basis of record it cannot be said that, there was dispute as regards rate of rent. The tenant did not take steps to deposit the arrears before the Rent Controller when demand was made and proceeding was filed for eviction. It appears that after 8 years of starting of litigation, only to avoid eviction the tenant made payment before the Rent Controller.

7) In the case reported as **2001 Mh.L.J. 23 (Nandlal Govindram v. Ashok Balram)** the provisions of Section 15(2)(i) with its proviso of the Act with regard to default are discussed. This Court has observed that if landlord proves the default, burden shall be on the tenant to prove that the default was not wilful.

8) In the case reported as **2000(2) Mh.L.J. 644 (Shrikrishna Oil Mill, Latur v. Radhakishan Ramchandra)** this Court has held that evidence with regard to default needs to be construed strictly. It is held that if default is proved and the tenant fails to prove it was not wilful, the Rent Controller should give order of eviction. It is laid down that subsequent payment of arrears made by the tenant cannot take away the right of the landlord when such default is committed. In view of this position of law and aforesaid record and circumstances, this Court holds that the learned Principal District Judge has not committed error in giving decree of eviction on the ground of default.

9) So far as the ground of bona fide requirement for personal use is concerned, there is evidence of the landlord to the effect that the premises is required for starting business. There are many successors of the original owner who had filed the proceeding. The tenant has not given evidence on the hardship which may be caused to him. Learned Principal District Judge has rejected this claim only on the ground that the landlord was not running business at the relevant time.

10) The relevant portion of Section 15 of the Act reads as under:-

œ15. Eviction of Tenants: (1) A tenant shall not be evicted, whether in execution of a decree or otherwise except in accordance with the provisions of this section.

(3) (a) A landlord may subject to the provisions of clause (d) apply to the Controller for an order directing the tenant to put the landlord in possession of the house “

(i) in case it is residential house, if the landlord requires it for his own occupation and if he is not occupying a residential house of his own in the city, town or village concerned;

(ii) in case it is a non-residential house which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own use and if he is not occupying any such building in the city, town or village concerned which is his own or to the possession of which he is entitled:

(iii) in case it is any other non-residential house, if the landlord is not occupying for purpose of a business which he is carrying on, a non-residential house in the city, town or village concerned which is his own or to the possession of which he is entitled;

(iv) if the landlord desires to carry out essential repairs or alternations to the house which cannot be made without the tenant vacating the house or bona fide requires the house for the purpose of building or re-building or for making substantial additions which cannot be made without the tenant vacating the house:

Provided that a person who becomes landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered.

Provided further that where a landlord has obtained possession of a house under this clause, he shall not be entitled to apply again under this clause :-

(i) in case he has obtained possession of a residential house, for possession of another residential house of his own;

(ii) in case he has obtained possession of a nonresidential house of his own for possession of another non-residential house:

Provided further that where a landlord has obtained possession of a house under sub-clause (4) he shall on the completion of the work of repairs, alternations, building, re-building, or making additions, giving the tenant the first preference for

occupying the house on such terms as may be settled by the Controller.

(b) Where the landlord of a house, whether residential or non-residential, is a religious, charitable, educational or other public institution, it may if the house is required for the purposes of the institution, apply to the Controller subject to the provision of clause (d), for an order directing the tenant to put the institution in possession of the house.

(c) A landlord who is occupying only a part of a house, whether residential or non-residential, may, notwithstanding anything contained in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the house to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for the purposes of a business which he is carrying on, as the case may be.

(d) Where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period.

(e) The Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession of the house on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order ejecting the application.

Provided that, in the case of an application under clause (c), the controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will out-weigh the advantage to the landlord;

Provided further that, the Controller may give the tenant a reasonable time for putting the landlord in possession of the house and may extend such time so as not to exceed three months in the aggregate.?

11) The plain reading of the provisions of Section 15(3)(a)(iii) and 15(3)(c) show that these two provisions are exclusive of each other. Sub clause (c) shows that when the landlord is already running business in other portion and he wants the premises for expansion of business then he can ask possession from the tenant.

On the other hand section 15(3)(iii) applies when land lord has no other premises and so he wants the suit premises.

12) In the case reported as **2003(4) Mh.L.J.226 (Dwarka Prasad v. Niranjan)** the Supreme Court has observed that normally rent statutes are meant for the benefit of tenant. But if in the rent statutes some exceptions are given in favour of the landlord which give him a right to evict the tenant then the provision needs to be interpreted in such a way that the object behind the provision is served.

13) In the case reported as **2008(2) ALL MR 345 (Usha v. Ravindra)** the Apex Court has held that bona fide requirement of landlord and his family members need to be considered. In the case reported as **1999(2) Mh.L.J. 793 (Dattatraya v. Abdul)** the Apex Court has held that absence of existence of any business cannot lead to inference of absence of bona fides of landlord.

14) As the provisions are to be liberally interpreted, this Court holds that the order of eviction cannot be refused on the ground that the landlord was not having existing business. Further, the aforesaid two provisions show that there is sufficient scope to say that landlord is entitled to get possession on the ground of his bona fide requirement even if he has no existing business in the same city. It can be said that at the time of deciding ground of bona fide requirement, the Court is expected to consider the point of comparative hardship. There is no specific evidence from the tenant on this point. He has not proved that greater hardship will be caused to him. In view of this position of law and the facts and circumstances of the present case, this Court holds that the learned Principal District Judge has committed error in refusing the relief of eviction on the ground of bona fide requirement. In the result, the following order.

15) Civil Revision Application No.39 of 2014 is allowed. The judgment and order of the Rent Controller and also the learned Principal District Judge rejecting the claim of the landlord of possession on the ground of bona fide requirement for personal use are hereby set aside. The application is allowed. It is held that the landlord is entitled to get possession on this ground also.

16) Civil Revision Application No.170 of 2013 filed by the tenant is dismissed.

