

CASE NO.:
Appeal (civil) 321 of 1999

PETITIONER:
BADRINARAYAN CHUNILAL BHUTADA

RESPONDENT:
GOVINDRAM RAMGOPAL MUNDADA

DATE OF JUDGMENT: 15/01/2003

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2003(1) SCR 329

The Judgment of the Court was delivered by

R.C. LAHOTI, J. A decree for eviction in a landlord-tenant litigation upholding availability of ground for eviction u/s 13(1)(g) of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter 'the Act' for short) but denying the relief of eviction based on the finding on issue as to comparative hardship within the meaning of Section 13(2) of the Act is under challenge in this appeal by special leave filed by the appellant-landlord.

The suit premises are situated in the city of Pune and are described in city survey as No. 573, Ravivarpet. The premises are the part of a building having two wings and three floors, i.e. the ground floor and two upper floors. The eastern wing is in the occupation of the landlord-appellant. The ground floor is used as a shop. The first and the second floor are used as residence for the appellant and this family. The western wing is in the occupation of the tenant-respondent who runs a shop on the ground floor and resides with his family in the upper two floors. The appellant's family consists of the appellant and his wife and four married sons, i.e. five couples who live as joint family. They have nine grand children, as stated at the Bar during the course of hearing. The suit property was purchased by the appellant in the year 1973. In the year 1982 the landlord initiated proceedings in the court of Small Causes. Pune for recovery of possession over the premises as also for recovery of arrears of rent and education cess. The grounds on which the eviction was sought for were (i) default in payment of arrears, (ii) misuse of the tenancy premises, and (iii) reasonable and bona fide requirement of the premises by the landlord for occupation by himself and his family members as residence in the upper floors and for the business of two sons of the appellant on the ground floor. The Trial Court held against the appellant on all the three ground for eviction. In an appeal preferred by the landlord the Appellate Court too held against the appellant, upholding the findings of the Trial Court, so far as the grounds of default in payment of arrears and misuse of the tenancy premises in concerned and on both the grounds confirmed the findings of trial court. On the ground of requirement, the Appellate Court held that, so far as the upper two floors are concerned, reasonable and bona fide requirement of the landlord for occupation by himself and his family members is made out and that the appellant would suffer great hardship if the eviction is denied than the hardship which the tenant would suffer in the event of eviction being ordered. So far as the ground floor of the tenancy premises is concerned, the Appellate Court held that the reasonable and bona fide requirement of the landlord for running the business of his two sons in the tenancy premises is made out but then the tenant would suffer greater hardship if evicted from the ground floor compared with the hardship which the landlord would suffer in the event of the eviction being denied. On these findings, the Appellate Court directed

a decree for eviction being passed from the residential portion of the tenance premises, i.e. the first and second floors but denied the eviction so far as the non-residential part of the tenancy premises, i.e. the ground floor is concerned.

Feeling aggrieved by the decree of the Appellate Court, both the parties filed writ petitions in the High Court. The High Court has dismissed both the writ petitions and refused to interfere with the decree of the Appellate Court. So far as the decree for eviction from the residential part of the premises is concerned, the same has achieved finality in view of the tenant-respondent having not appealed there against. The landlord has persisted in his claim for eviction from non-residential part of the tenancy premises. This appeal by special leave is, therefore, confined to the issue whether the decree for eviction should have been passed against the tenant-respondent from the non-residential part of the tenancy premises, i.e. the ground floor also.

Clause (g) of sub-section (1) of Section 13 and sub-section (2) of Section 13 which are relevant for the purpose of this appeal are extracted and reproduced hereunder :-

13. When landlord may recover possession. (1) Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

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(g) that the premises are reasonably 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 a public charitable trust that the premises are required for occupation for the purposes of the trust;

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(2) No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where 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 shall pass the decree in respect of such part only.

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The finding of fact arrived at by the Appellate Court and sustained by the High Court is that the landlord and the tenant are both engaged in cloth business, which is being run by the two in the respective ground floors of the eastern and western wings of the building. On the sons of the landlord having come up in age, they have started the business of dealing in electronic goods. As there was no other independent accommodation available for the business of electronic goods, the same had to be commenced and accommodated in the shop in which the cloth business was being already carried on by the landlord. Thus the two businesses, both flourishing as the evidence reveals, have been squeezed into space of one shop. On the date of the institution of the suit, the landlord-appellant and his second son were looking after the cloth business while the electronic goods business was being looked after by the eldest and the third son of the appellant. Although the two businesses are being run in the same premises,

the landlord and his sons felt suffocated on account of inadequate space for both the businesses. A pre-existing partition on the ground floor had to be removed and the entire ground floor in the occupation of the landlord is being made use of for commercial activity and yet the space is insufficient. In the electronic good shop, TV sets, refrigerators, washing machines and other such items are required to be kept and displayed as in a showroom and for that purpose the available space is not enough. On these facts, the finding as to genuine requirement was arrived at by the Appellate Court and upheld by the High Court and rightly so in our opinion. The only question which now survives for decision is the exercise of discretion under sub-section (2) of Section 13 of the Act.

A perusal of the judgment of the Appellate Court shows that the tenant has been running his cloth shop in the suit premises since the times of his father and is the only earning source of the tenant-respondent. The shop is situated in a locality where mostly cloth shops are situated. The shop also carries some goodwill. On the contrary, the turnover of the cloth business, so far as the landlord is concerned, is stated to be around 10-12 lakhs rupees per year. The turnover of the electronics business is stated to be around 7-8 lakhs rupees per year. The tenant's evidence shows that he is having a lesser turnover and lesser business. The High Court opined that if the tenant was to be vacated from his shop, he would be required to pay a huge premium of Rs. 4-5 lakhs for availing other suitable business premises in the Kapadgunj locality where the suit shop is situated. On the abovesaid facts and opinion, the question of comparative hardship has been answered by the Appellate Court in favour of the tenant-respondent. The same reasoning has found favour with the High Court also.

A perusal of the scheme of the Act, so far as the ground of reasonable and bona fide requirement by the landlord for occupation of residential or non-residential premises is concerned, shows that clause (g) of sub-section (1) of Section 13 contemplates a decree for eviction being passed on proof of availability of the ground according to law. In spite of a ground for eviction u/s 13(1)(g) having been made out, the Court may deny the relief of eviction if the issue as to comparative hardship is answered against the landlord and in favour of the tenant. Thus in a way, Section 13(2) acts as a proviso to Section 13(1)(g) the former having an overriding effect on the latter. The burden of proving availability of ground for eviction under Section 13(1)(g) lies on the landlord; the burden of proving greater hardship so as to deprive the landlord of his established right to seek eviction lies on the tenant.

Sub-section (2) of Section 13 falls more appropriately within the domain of equitable or social justice. Section 13(2) obliges the Court, in spite of the finding as to reasonable and genuine requirement having been arrived at in favour of the landlord, to weigh in scales placing the hardship which would result to the landlord in case of denial of eviction in one balance pan and the hardship likely to be suffered by the tenant in case of his being evicted in the other and then find out judiciously which way the balance tilts. An empty truism cannot be hardship. A failure of the landlord to make out a case for eviction under Section 13(1)(g) is not a hardship to landlord; so also on a case for eviction under Section 13(1)(g) having been made out the fact that the tenant will be liable to be evicted is not by itself hardship to tenant. A mere wish or desire of the landlord to acquire possession over the tenancy premises cannot be said to be bona fide and reasonable requirement. Requirement implies an element of necessity. The necessity is a necessity without regard to the degree of which it may be. For the purpose of Section 13(2) the degree of urgency or the intensity of felt-need assumes significance. It is a judicious process of finding out, as far as practicable, and then making a comparative measure of the two degrees, which is involved in arriving at a finding on comparative hardship.

The family, the business background of the parties, the availability of accommodation with either parties or in the township, the extent of

direness or pressing nature of the need for eviction as against the dieness of need or urge of the tenant to continue to occupy or cling to the tenance premises, with reasons therefor, assume relevance. The Court may keep in view how the things would take shape in a reasonably foreseeable future in either event. The conduct of the parties, their mutual relationship may also be relevant. In spite of the availability of ground for eviction being legally sustainable, for the purpose of deciding the issue as to comparative hardship, the Court may take into consideration availability of such other premises with the landlord, which though not necessarily alternative to the suit premises, may still be available to accommodate the proven requirement of the landlord. The fact that the tenant could have had shifted to other premises or has missed the opportunity of availing occupation of their premises or is likely to part with possession over other premises whereto his business can be or could have been shifted are all relevant factors for the purpose of Section 13(2) though may not be relevant for the purpose of Section 13(1)(g). These are illustrative factor, incapable of being listed fully and precisely, which enter into the thinking process leading to formulation of opinion on comparative hardship.

The provisions of the Act do not bar a partial eviction being ordered- rather contemplate a partial eviction specifically-which would of course depend on answer to the question-whether it would be enough to dislodge the tenant from only a part of the premises in his possession, and to what extent, to satisfy the proved requirement of the landlord associated with consideration of comparative hardship? If the Court is satisfied that the ends of justice would be met if the tenant is not called upon to vacate the entire tenancy premises but only a part of it, then the Court may order partial eviction so that the requirement of the landlord is satisfied and the tenant is also not deprived of his running business activity. Inasmuch as Section 13(2) entails the consequence of the landlord being denied decree of eviction, wholly or partly in spite of his having proved reasonable and bona fide requirement within the meaning of Section 13(1)(g), the burden of proving availability of grounds u/s 13(2) of the Act is on the tenant. It is expected of the parties to raise necessary pleadings, and the Court to frame an issue based on the pleadings so as to enable parties to adduce evidence and bring on record such relevant material as would enable the Court forming an opinion on the issue as to comparative hardship and consistently with such finding whether a partial eviction could meet the ends of justice. Even if no issue has been framed, the Court may discharge its duty by taking into consideration such material as may be available on record.

The Act does not lay down any guidelines or relevant factors based whereon the question of comparative hardship is to be decided. A slight indication is given in the first para of Section 13(2) that regard must be had to (i) all the circumstances of the case, (ii) including the question whether other reasonable accommodation is available for the landlord or the tenant. The expression 'other reasonable accommodation' as employed here does not mean an accommodation suitable in all respects as the suit accommodation is. The Legislature has chosen it appropriate to leave the determination of issue on sound discretion of the Court.

In *Mst. Bega Begum and Ors. v. Abdul Ahad Khan (dead) by Lrs. Ors.*, [1979] 1 SCC 273 *pari materia* provision contained in J & K Rent Act came up for the consideration of this Court. It was observed that it is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed but such an event would happen whenever a decree for eviction is passed and merely because the tenant will be ousted from the premises where he was running his activity cannot, by itself, be considered to be a hardship and be a valid ground for refusing the landlord a decree for eviction. In deciding the extent of the hardship, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable. The owner of the property cannot be denied eviction and compelled to live poorly merely to enable the

tenants to carry on their flourishing business activity at the cost of the landlord. The fact that there is no other means for the landlord to augment his income except by getting the tenancy premises vacated compared against the conduct of the tenant who having obtained the premises for a fixed number of years has overstayed and enjoyed the premises for a long period of time are relevant factors not to deprive the landlord from the possession over the tenancy premises and recording a finding of no equity in favour of the tenants continuing in possession any further. If the tenants prove that they will not be able to get any accommodation anywhere in the city that may be a relevant consideration. However, the tenant cannot insist on getting an alternative accommodation of a similar nature in the same locality because that will be asking for the impossible. What are to be weighed as relevant factors are the comparative inconvenience, loss, trouble and prejudice.

In *Piper v. Harvery*, (1958) 1 AII.E.R. 454, the issue as to comparative hardship arose for the consideration of Court of Appeals under the Rent Act, 1957. Lord Denning opined: "When I look at all the evidence in this case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and this is that the tenant did not prove (and the burden is on him to prove) the case of greater hardship." Hudson, L.J., opined: "The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship, such as unsuccessful attempts to find other accommodation, or, indeed, to raise the question of his relative financial incompetence as compared with the landlord." On such state of the case, the Court answered the issue as to comparative hardship against the tenant and ordered his eviction.

The learned counsel for the appellant submitted that the statutory obligation case on the Court to weigh and assess the comparative hardship has not been properly discharged and that has caused prejudice to the appellant. It was pointed out that the burden which lay on the tenant has been wrongly cast on the appellant as the High Court has expressed during the course of its judgment that the appellant has adduced no evidence to show that shops were available in the locality where the tenant could shift on vacating the suit premises. It was also pointed out that the Appellate Court and the High Court have completely failed to examine whether at least a partial eviction from the tenancy premises could have been ordered. It has come in the evidence that some portions of the ground floor are being used by the respondent as godown and for storing waste material, the area whereof is approximately 300 sq. feet as per the site plan available on record. In view of the case for eviction u/s 13(1)(g) having been made out by the landlord, if the tenant would have been directed to be evicted at least from the portions shown as 'godown' and 'waste material' in the plan which portion of the premises has not been in use of business of the tenant, the tenant would not have suffered any prejudice or hardship or at least not much thereof. We find merit in the submission so made.

In the peculiar facts and circumstances of this case, we are inclined to have a specific finding being arrived at by the Appellate Court to meet the ends of justice.

The appeal is partly allowed. The judgment and decree of the Appellate Court and upheld by the High Court, to the extent to which eviction from the non-residential premises (i.e. ground floor) has been denied to the appellant, is set aside. The case is sent back to the Appellate Court. The Appellate Court shall frame the following issues :-

(i) Whether the defendant-tenant would suffer greater hardship in the event

of being evicted than the hardship which the plaintiff-landlord would suffer in the event of eviction being denied?

(ii) Whether in the facts and circumstances of the case, a partial eviction would meet the ends of justice and, if so, to what extent?

The Appellate Court may record the findings on the abovesaid issues on the material already available on record and after hearing the parties. If the Appellate Court feels that the material already available on record is not enough to arrive at findings on the abovesaid issues, the parties may be afforded an opportunity of adducing additional evidence. In the latter case, the parties shall adduce evidence in a time bound programme. The proceedings shall be completed as expeditiously as possible and in any case within a period of four months from the date of communication of this order.

No order as to the costs of this appeal.