IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6877 OF 2016

1.Shri.Udayan Vinayak Modak …Petitioners
2.Miss Gargi Udayan Modak
Both residing at CTS No.759/63
Ganesh Sadan, Prabhat Road,
Deccan Gymkhana, Pune 411 004

Versus

1. Miss Madhavi Chandrashekhar Kale …Respondents
R/at. Flat No.6, 3rd floor, 525, Narayan Peth,
Vishwakumud, Near Modi Ganpati,
Pune 411 030

2. Mr.Anil Chandrashekhar Kale
At Sungauri Society, C-11,
Kumbre Township, Kothrud,
Pune 411 029

3. Mrs.Neha Chakradev
Sangameshwar College, Sat Rasta,
Chowk, Solapur.

4. Miss Nivedita Chandrashekhar Kale
R/at. Flat No.6, 3rd Floor,
525, Narayan Peth, Vishwakumud,
Near Modi Ganpati, Pune 411 030.

Mr.A. V. Anturkar, Senior Advocate i/b. Mr.Prathamesh Bhargude and Mr.Ajinkya Udane for the for the petitioners.
Mr.S.M. Gorwadkar, Senior Advocate i/b. Mr.Mankirat Singh Chhabra for respondent nos.1, 2 and 4.

CORAM : DAMA SESHADRI NAIDU, J.

RESERVED ON : 15th JULY 2019.

PRONOUNCED ON: 6th September 2019.

JUDGMENT :

Introduction:

The landlord seeks eviction of his tenants; they resist. The matter goes to Court. The trial Court and the Appellate Court concurrently hold that the landlord has failed to establish his *bona fide* requirements. Aggrieved, the landlord invokes Article 227 of the Constitution of India and files a writ petition. The question is, what is the High Court's adjudicatory ambit under Article 227 to upset the concurrent rulings of the fact-finding courts?

Facts:

2. The pleadings, as set out by the landlord, present a poignant picture; so too are the arguments, as advanced by the learned Senior Counsel for him: *argumentum ad hominem.* That said, I am afraid emotional elements may not affect the cold letter of law, nor do they alter the facts—as concurrently approved.

3. Let us refer to the facts only as required for our adjudicating this writ petition under this Court's supervisory powers. Mrs. Vrushali, alias Yogini Udayan Modak, was the landlady; she had that property bequeathed to her by her father. During her lifetime, she filed Civil Suit No.396 of 2007. She

wanted to evict four tenants on the grounds of arrears of rent and *bona fide* requirement. The 1st and 4th tenants are sisters; they alone contested the suit. The second and the third defendants, said to be the other tenants, filed written statement but did not contest the case. They seemed uninterested. In fact, they are not living in the leased property.

4. In the suit, late Vrushali pleaded that she wanted the property now under lease—that is, three rooms out of six and the ground floor—for her *bona fide* requirement. In that context, she pleaded that she had been suffering from epilepsy, that her daughter has been mentally disabled, and that her daughter needed personal care. Pending the suit, she died and her husband, Udayan, succeeded to the estate and continued the suit proceedings.

5. After suffering concurrent adverse findings as mentioned already, Shri Udayan has taken the matter to this Court in revision.

Submissions:

Petitioner:

6. In the above factual context, Shri Anil Anturkar, the learned Senior Counsel, has submitted that Udayan's wife, the original plaintiff-landlady died of epilepsy. So Udayan no longer pleads about the *bona fide* requirement on her part. Fair is the submission.

7. Shri Anturkar has also submitted that Udayan, a widower,

could not, by himself, care for his grown-up daughter. She was in the teens when her mother filed the suit and, now, is in her mid-twenties when her father is continuing the case. Shri Antukar has elaborately described the disability Udayan's daughter has been suffering from: her state of mind, her inability to take care of herself, and her dependence on others round the clock. Then, he has submitted that under those critical circumstances, Udayan has engaged a full-time maid to take care of his daughter. Because the maid must take care of his daughter, Udayan has allowed her to stay in the house. Thus, she has been provided with board and lodging, too. And this has required additional accommodation, besides an exclusive place of privacy for his disabled daughter.

8. Taking me through the record, Shri Anturkar has described the property in detail. According to the learned Senior Counsel, on the ground floor, three rooms are in Udayan's possession and three in the tenants' possession. The leased property does not have any attached bathrooms. According to him, as the property in question is a bungalow, it has an outhouse comprising 4 rooms. And that outhouse has bathroom and WC, which are commonly used by the respondents-tenants and also by the tenants living in two of those four rooms in the outhouse.

9. To elaborate, Shri Anturkar has submitted that now Udayan lives in one room and his grown-up daughter in another. And the remaining room is converted into a drawing room.

Though the maid, who has now become a *de facto* mother, could not have proper accommodation. According to Shri Anturkar, the maid cannot share the room allotted to Udayan's daughter. For given her mental condition, she needs privacy. And that compels Udayan to arrange separate accommodation for the maid.

10. The learned Senior Counsel has also submitted that despite the tenants' disentitlement to continue in possession, Udayan has never intended to throw them out summarily. Instead, as an alternative, Udayan has submitted both before the courts below and, now, here that they could be given alternative accommodation, that is the remaining two rooms in the outhouse. To justify this proposal, Shri Anturkar underlines the fact that both the tenants are living single (unmarried) and one of them has already retired from service.

11. Eventually, Shri Anturkar has taken me through the judgment of the trial Court as well as that of the Appellate Court. In that context, he has submitted that both the courts have failed to consider vital aspects of the case. They have entirely ignored, Shri Anturkar stresses, the relevant hardship the landlord has been put to.

12. He has also submitted that though the maid not well converse in legal intrinsic, deposed that the 1st floor has been in Udayan's possession, referred, in fact, to falsify that deposition to that extend Shri Anturkar has submitted that Udayan's father-in-

law, the original owner, in fact, bequeathed the 1st floor to his close relative through Will, which is already a part of the record and which stands admitted even by defendants. Thus, once, the third party has title and possession of the property the question of Shri Udayan's being in possession of the floor is *ex facie* false.

13. Faced with the problem of inviting a fresh adjudication on facts in a revision, Shri Anturkar has relied on *Raghunath G. Panhale (dead) by Lrs v. Chaganlala Sundarji and Co.*[1] According to him, even into concurrent findings of facts there can be a relook if the findings are absolutely wrong in law and perverse on facts.

14. Shri Anturkar has submitted that the 1st defendant has her own flat, so she would not be rendered homeless if the Court were to believe in Udayan's *bona fide* requirements. It has also come in evidence that the 2nd respondent is using the leased property as a lawyer for her profession.

Respondents:

15. In response, Shri Gorwadkar, the learned Senior Counsel for the respondents, has submitted, at the outset, that indeed the outhouse has a separate room or two, but they are unlivable as per the evidence placed on record through one of Udayan's witnesses. In that context, he has submitted that a *bona fide* requirement must be viewed in the backdrop of reasonable need.

16. The Courts below, according to Shri Gorwadkar, on the

[1] (1999) 8 SCC 1

appreciation of facts found that Udayan has sufficient accommodation to comfortably accommodate his entire family—that is, he himself, his daughter, and his domestic assistant. About the first floor, said to be in possession of the legatee under the Will, Shri Gorwardkar has drawn my attention to the maid's deposition in which she has, according to him, categorically admitted that it has been in Udayan's exclusive possession. About the veracity of the maid's statement, Shri Gorwadkar has submitted that on the one hand Udayan maintains that the maid is the *de facto* mother and needs separate room for herself. But on the other hand, he wants the courts to treat her only as a maid who knows nothing.

17. About the alternative accommodation, Shri Gorwadkar has submitted that in response to the offer made by Shri Udayan, the tenants have filed a detailed reply in which they have stated about the physical condition of that particular outhouse, especially two rooms, now, offered, he has, then elaborated the actual state of the rooms. In that context, once again, Shri Gorwadkar has drawn my attention to the deposition of Doctor who is said to have using the said rooms once in a week as his clinic.

18. In the end, Shri Gorwadkar has submitted that 1st defendant has a flat, which he does not use for residential purpose, but for the professional purpose by the other defendant i.e. the 2nd defendant.

19. Heard Shri Anil Anturkar, the learned Senior Counsel for the petitioner, and Shri Gorwadkar, the learned counsel for the respondents.

Discussion:

***Bona Fide* and Reasonable Requirement:**

20. The question is that of bona fide requirement. And it takes into its fold the comparative convenience or inconvenience. And it is essentially a question of facts and the factual evaluation. When the trial Court decided the case, Vrushali, the original owner was alive; pending appeal, she died. Udayan, her husband came into picture. Udayan fairly concedes that one facet of the personal need has disappeared with his wife's death, but the other facet remains: his daughter's growing needs, which include his providing board and lodging to Shobha, the maid or personal assistant who takes care of Udayan's daughter.

21. In the suit, too, it is Udayan, who deposed as PW1. He has deposed that his wife, being the only daughter, had the suit property bequeathed to her through a Will, dated 3rd March 2001. But her father willed away the first floor to someone else: his nephew. That nephew is said to be in possession of the first floor. So the bone of contention is the ground floor. The outhouse is only a collateral issue in this episode. He has deposed in his evidence that he is "in possession of three rooms, kitchen and veranda, along with toilet bathroom. [He is] also in possession of

Kotha/store room admeasuring 5x10 ft."

22. Indeed, the plaintiff examined her full-time attendant Sulabha Malore as P.W.5. She has admitted in her cross examination that no tenant resides on the first floor of the property. The entire first floor is in Udayan's possession. Based on the evidence, the trial Court has held that "there is no doubt about bona fide need of plaintiff, but the evidence on record shows that there is more than sufficient premises available with the plaintiff."

23. About the evidence of P.W.5, Shri Anturker contends that the Will executed by Udayan's father-in-law stands admitted. For the first floor, there is a lawful legatee and, now, owner. Therefore, the inarticulate maid's testimony contrary to the record is of no consequence. Attractive is the submission, but it fails judicial muster. P.W.5, the maid may not know anything about the bequeathment. But she does know who is in possession of the property. Title is an aspect of law and one may need to be articulate to know about it; possession is an aspect of fact and one may be inarticulate and still know about it. May be the witness's inarticulate attitude made her a more credible witness of all.

24. On appeal, the District Court has noted that Udayan has another residential property and that he has not spelt out how it is inconvenient for him to live there. But it also accepts that it is for the landlord to decide which property he must live in. So it does not pursue that issue further. It nevertheless notes that there reside

only three persons in Udayan's house: he himself, his daughter, and the assistant. And he has three rooms and veranda, besides W.C. The Appellate Bench finds that a portion of the outhouse in which earlier a tenant, Sabnis, was living, is now vacant. That can be used for the domestic assistant. That said, Udayan contends that the domestic assistant must live close by, for his daughter needs her any time.

25. For the plaintiffs, Dr. Rangnekar got himself examined as PW-3. The doctor deposed that he has been treating Udayan's daughter. She is said to be a slow learner, and "some person is constantly required to keep a watch and take care of her particularly being a female child aged 17 years (then)" He says Udayan is running an ayurvedic massage centre in the outhouse, where he is permitted to run his clinic once in a week. The Appellate Bench concludes that Udayan could use this outhouse to accommodate his domestic assistant. The Appellate Bench disbelieves Udayan and concludes that "there lies the falsity in the contention of plaintiffs that they require the suit premises bona fide and reasonably."

26. In the outhouse, there are four rooms. In two rooms, one tenant resides. The remaining two rooms are vacant. So the District Court in appeal has concluded that Udayan is not only in possession of three rooms and veranda on the grounds floor but also in possession of two more rooms in the outhouse. The District

Court, it seems, has mistaken the outhouse as the ground floor.

27. The District Court, the final court of fact, has held that the plaintiff's need "is certainly not bona fide and reasonable. In the event of the decree of eviction in favour of plaintiffs, defendants nos. 1 and 4 will be certainly put to greater hardship because they are not having any residential accommodation in the locality or elsewhere."

Alternative Accommodation:

28. Udayan maintains that he has never intended to throw the two tenants out. He wants to provide them an alternative accommodation, that is the remaining two rooms in the outhouse. According to Udayan, both the tenants have been living single (unmarried) and one of them has already retired from service.

29. The tenants, on the other hand, maintain that the outhouse is used as a makeshift Ayurveda massage center, and a doctor has his clinic, too. Besides, they stress it is entirely unfit as living accommodation, more particularly for women.

30. The contesting tenants, the sisters, have filed an additional affidavit to counter Udayan's offer of alternative accommodation to them. They first contend that what Udayan calls a verandah is a full-fledged room. They then contend that they have no access to bathroom and toilet in the main building. So they were using the one attached to the outhouse. It was used along with the other tenants in the two of the four rooms. Once

Udayan lost the case in the trial Court, he allowed Apte, the tenant in the outhouse, to convert the bathroom into an extra room. So he demolished the wall on one side, fixed a door, and made it a part of his tenement. So now only the toilet remains. The two women are taking their bath in the "tiny mori in the kitchen." They also state that the outhouse has no mezzanine floor. That apart, it has a loft having just less than three feet height slanting roof from one side.

31. At any rate, P.W. 3 has deposed in his evidence-in-chief that "the outhouse is an old structure have tiled roof and is in dilapidated condition, which is not suitable for residence."

32. All is said and done, dispute is entirely factual and has been concurrently decided against the landlord. But before parting, we must address one more issue. Can this Court, under Article 227 of the Constitution of India, interfere with concurrent findings of fact in a tenancy dispute? Shri Anturkar maintains the answer as an "yes." So he cites *Raghunath G. Panhale*. Let us examine it.

33. The original landlord filed a suit for eviction on the grounds of bona fide and reasonable requirement. The respondent-tenant resisted it. Pending the suit, the original plaintiff died; his heirs were brought on record. They amended the pleadings. The third legal representative pleaded that he wanted the leased property to start grocery business. In that context, he

stated that he was working in Metal box. Co., that there was a lock-out in that company, that he was finding it difficult to maintain his family, and that he wanted to improve his livelihood by starting grocery business.

34. The trial Court held that on the original landlord's death, the suit abated. On merits, the trial Court held that there was no proof of lock-out, no proof of capital available for investment, no proof of preparations for business, and no proof of the third appellant's having experience in grocery business. It further held that the lockout did not put the appellant out of his job permanently; the appellant had not resigned his job. therefore, the requirement was not bona fide. The lower appellate Court confirmed the finding on the question of bona fide requirement but reversed the finding as to abatement. The appellate Court gave a finding that the tenant had got three other shops. The appeal was dismissed. The High Court, too, seems to have accepted the verdict of the courts below. The landlords came up in appeal to the Supreme Court.

35. *Raghunath G. Panhale* has held that the word 'reasonable' connotes that the requirement or need is not fanciful or unreasonable. It cannot be a mere desire. The word 'requirement' coupled with the word 'reasonable' means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. The language of the

provision, it is held, cannot be unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get possession. *Raghunath G. Panhale* warns that if more limitations are imposed upon the landlord holding property, it would expose itself to the vice of unconstitutionality.

36. In the end, *Raghunath G. Panhale* has observed that "unfortunately the High Court simply dismissed the writ petition filed under Article 227 stating that the findings were one of fact. That is why we think that this is an exceptional case calling for interference under Article 136 of the Constitution of India."

37. Indeed, resounding is the judicial assertion, but here the courts below have evaluated the comparative hardship. And this Court, too, has gone an extra mile in reappreciating the facts. Yet the outcome remained the same. So I cannot but hold that this Writ Petition has failed.

Accordingly, I dismiss the writ petition. No order on costs.

[DAMA SESHADRI NAIDU, J.]