

CASE NO.:
Appeal (civil) 1210 of 2005

PETITIONER:
ADIL Jamshed Frenchman (D) by LRs.

RESPONDENT:
Sardar Dastur Schools Trust & Ors.

DATE OF JUDGMENT: 14/02/2005

BENCH:
CJI, G.P. Mathur & P.P. Naolekar

JUDGMENT:
J U D G M E N T
(arising out of SLP (C) No. 18057 of 2002)

P.P. Naolekar, J

Leave granted.

The Third Additional District Judge, Pune, seized of hearing a first appeal, allowed an application under Rule 27 of Order 41 of the Code of Civil Procedure, 1908 (hereinafter 'the Code' for short) seeking production of four documents in additional evidence. The High Court has, by its impugned order passed in exercise of revisional jurisdiction under Section 115 of the Code, set aside the order of the first appellate court.

This is a landlord-tenant suit in which the eviction of the tenant is sought for under Section 13 of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 on several grounds, namely, that the landlord reasonably and bona fide require the premises for occupation by himself, that the tenant had, without the landlord's consent, erected on the premises a permanent structure and that the tenant had changed the user of the tenancy premises by conducting the coaching classes therefrom.

The trial court decreed the suit and directed the tenant-appellant to be ejected but only on the ground of reasonable and bona fide requirement of the landlord. The availability of other grounds for ejectment was held not to have been made out. The tenant preferred the first appeal. During the pendency of the appeal, tenant moved an application under Order 41 Rule 27 of the Code seeking permission to lead additional evidence by way of production of documents, on the ground that the said documents were not available during trial before the trial court and that the said documents were necessary for the just and fair decision on the issues involved in the case. The documents sought to be produced are : (a) correspondence between landlord and M/s. Godrej Boyce Co. Ltd. indicating negotiation for sale or use of suit premises for a showroom by the Company; (b) modified plan for construction of building submitted before the authorities by the landlords in May 1998 after the judgment passed by the trial court wherefrom it appears that the landlord does not wish to demolish the super-structure to put up the new construction; (c) Public Brochure issued by the landlords inviting donation and funds for construction, indicating lack of funds for construction with the landlord. As per the tenant, document (a) was not available to the tenant in spite of due diligence and

documents (b) and (c) are the documents which came into existence after the trial court passed its judgment on 29.1.1999.

The first appellate court allowed the application holding inter alia that the tenants were not parties to the correspondence between the landlord and M/s. Godrej & Boyce Co. Ltd. and the fact of such negotiations had been denied by the landlords and that they could not have earlier obtained the knowledge of the document in spite of due diligence. The Court has also held that the documents are necessary for a just decision of the case.

The High Court has, while setting aside the order of the first appellate court, held that the tenant-defendant (appellant in the first appeal) had failed to establish that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

Clause (b) of sub-section (1) of Section 107 of the Code empowers an appellate court to take additional evidence. Rule 27 of Order 41 provides for the grounds on the availability of which alone, the parties to an appeal may be allowed to produce additional evidence.

The decree of the trial court is based on the landlords' bona fide requirement of the accommodation. In appeal, the question before the Court for adjudication is whether the trial court was justified in passing the decree in favour of the landlords on the ground of bona fide need and the tenants obviously are within their rights to show that the need of the landlords is not genuine. The evidence produced in that direction would be relevant for the purpose of adjudicating the question of need of landlords. In *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222, this Court has held that a bona fide requirement must be an outcome of a sincere and honest desire in contra-distinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejection of the tenant. The question to be asked by a Judge of facts by placing himself in the place of the landlord is whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. In *Deena Nath Vs. Pooran Lal* (2001) 5 SCC 705, this Court reiterated that bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire.

It cannot be denied that the documents sought to be produced by the tenants are material and if substantiated, would have a material effect on the case of the landlords of their bona fide need of the suit premises. If, in fact, the landlord has entered into negotiations with M/s. Godrej Boyce Co. Ltd. for selling or use by them of the property, the need cannot be said to be genuine. Similarly, a change in the construction plan may show that the alleged need of the landlord for the construction may not be genuine. The third document proposes to demolish the case of availability of the funds for construction with the landlord. Two of the documents came into existence after the passing of the decree by the trial court. Similarly, the correspondence entered into by the landlord with a third party

could not have been within the knowledge of the tenant and therefore, the tenants' statement that the documents could not have been produced before the trial court, in spite of the exercise of due diligence, was highly probable. In such circumstances, the High Court was not justified in interfering with the discretion exercised by the first appellate court permitting additional evidence.

For the foregoing reasons, the appeal is allowed. The impugned order of the High Court dated 13.6.2002 is set aside. The order of the Third Additional District Judge, Pune, dated 5.1.2000, allowing the defendant-appellant's application dated 20.11.1999 under Order 41 Rule 27 of the Code is restored.

No order as to the costs.

JUDIS