

CASE NO.:
Appeal (civil) 3424-3425 of 2005

PETITIONER:
Julieta Antonieta Tarcato

RESPONDENT:
Suleiman Ismail

DATE OF JUDGMENT: 20/02/2007

BENCH:
B.P. SINGH & H.S. BEDI

JUDGMENT:
J U D G M E N T

B.P.SINGH, J.

In these appeals by special leave the appellant has impugned the judgment and order of the High Court of Judicature at Bombay dated July 27, 2004 in Writ Petition No.4261 of 1991. The High Court by its impugned judgment and order allowed the writ petition filed by the tenant-respondent herein and dismissed the application for eviction filed by the appellant to evict the respondent from the suit premises which is a flat located at Bandra in the city of Mumbai. While doing so, the High Court set aside the appellate order of a bench of the Court of Small Causes, Mumbai which had held that the landlady \026 appellant herein had established her case of bonafide personal need of the suit premises. Having regard to the finding recorded by the High Court it is not necessary to reproduce the facts of the case in detail but to appreciate the findings of the High Court it is necessary to state the facts as briefly as possible.

The appellant herein undoubtedly, is the owner of the suit premises. She was residing in the suit premises till December, 1971 when she suffered serious burn injuries. In the unfortunate circumstances, since there was no male member residing with her, she moved to the premises owned by two of her brothers namely, father Lawrence and Mr. Tito, which premises are known as Ashoka Apartments. Till then she was residing with her mother and her brother and two of her nephews and one niece. The brother being a sailor, employed in the Merchant Navy, was very often on the high seas. Her brother, father Lawrence advised her that they should stay with him in the Ashoka Apartments. At about that time, the respondent herein was in need of accommodation since the premises occupied by him had collapsed and there was urgent need of accommodation for him and his family members which included two brothers, both of them lawyers. Under these circumstances, on 24th or 25th January, 1972 an agreement was executed between the landlady and the respondent purporting to let out the premises on leave and licence basis on monthly fee of Rs.550/-. It is not disputed that under the amended provisions of the Tenancy Act, such a licensee has acquired the status of a tenant.

Having stayed with her brother for several years, the appellant decided not to burden her brother any more and to return to her own premises along with the family members who were earlier residing with her. Accordingly, a notice terminating the tenancy was issued in the year 1979 and a suit for eviction followed in the year 1980. It is not necessary to refer to other legal proceedings relating to fixation of standard rent and eviction claimed on the ground of default in payment of rent. The case of the appellant was that she had to leave the suit premises in the circumstances narrated above, and started living with her brother. However, she needed the suit premises for her own reasonable and bonafide need and also for accommodating her two nephews and her niece who always resided with

her. Her nephews and niece also required sufficient accommodation to pursue their studies. The accommodation available in her brother's flat was not only insufficient but also inconvenient. She did not want herself and her nephews and niece to be a burden upon her brother, father Lawrence who was a research scholar, after enjoying his hospitality for a long time during her ailment. She submitted that she did not own any other immovable property in Mumbai nor did she have sufficient means to acquire or secure any other suitable accommodation for herself.

The respondent contested the application for eviction and denied that the appellant required the suit premises reasonably and bonafide for her own use and occupation along with her two nephews and her niece. It was asserted that they had been residing with the appellant in the Ashoka Apartments with her brother, father Lawrence who owned a big self-contained flat which had sufficient accommodation to accommodate all of them. There was denial of the fact that the appellant did not own any other immovable property in Mumbai nor did she have sufficient means to acquire or secure any other suitable accommodation for herself. It was also asserted that greater hardship would be caused to him if the decree for ejectment was passed.

The Trial Court framed several issues, the crucial issue being whether the plaintiff failed to prove her bonafide reasonable need of suit premises for her own use and accommodation along with her two nephews and one niece.

The Trial Court found on the basis of material on record that the appellant had been residing in the suit premises during the years 1966-68 and even thereafter. Therefore, the plea urged on behalf of the respondent that she used to give the suit premises to various persons on leave and licence basis was rejected. The facts found by the Trial Court also disclosed that soon after the appellant shifted to the apartment of her brother, the premises were given to the respondent on leave and licence basis. The defendant was also in dire need of accommodation since the premises occupied by him had collapsed. The Trial Court however, came to the conclusion that the appellant had gone to reside in the Ashoka Apartments with the intention not to come back in near future, and with that intention to give the premises on leave and licence basis to earn income therefrom. On the question of bonafide personal need, the Trial Court came to the conclusion that the appellant had claimed possession of the suit premises on the ground that the suit premises were reasonably and bonafide required by her and her nephews and niece who had grown up and required sufficient accommodation which was not available in the Ashoka Apartments and that she did not want herself and her nephews and niece to be a burden on her brother Lawrence. The Trial Court observed that the appellant had nowhere stated that she required the suit premises for her nephews and niece who had to pursue their studies and vocation. The Trial Court noticed that the mother of the appellant died during the pendency of the suit and her unmarried sister also got married and was residing with her husband at Goa. Her niece also got married and was residing with her husband at Goa, while one of her nephews Lino joined the Merchant Navy and the other Brian was studying for his M.B.B.S. Degree. The Trial Court considered the evidence in great details and came to the conclusion that since some of the family members residing with the appellant started residing elsewhere after marriage or on getting employed, there was sufficient accommodation available in the apartment of her brother Lawrence which was a spacious apartment consisting of three bed rooms, a hall, kitchen etc.

The Trial Court further held that the appellant as well as her brother Lawrence had sufficient income to maintain themselves and, therefore, the plea of the appellant that she did not want to burden her brother any more did not appear convincing. It, therefore, concluded that the accommodation in Ashoka Apartments was sufficient for the appellant as well as others who were residing with her. Her requirement of additional premises therefore could not be said to be reasonable and bonafide.

On such findings the Trial Court dismissed the eviction petition. The appellant preferred an appeal before the Appellate Bench of the Court of Small Causes at Mumbai. On a consideration of the evidence on record the Appellate Bench held that the appellant had made out a case of bonafide personal need of the premises in question. It found that the appellant had not left her own apartment permanently without any intention of coming back. The Trial Court was in error in holding that the appellant had left her apartment once for all. In any event, this question was immaterial to decide the question of bonafide personal need. It considered the appellant's plea that she had lived with her brother for quite some time and she did not want to stay there any longer. She therefore required her own premises for her own occupation and her need could not be said to be unreasonable. Since she had her own flat on the ground floor which suited her in her old age, and she did not wish to burden her brother any more, there was nothing unreasonable in her wanting to reside in her own apartment rather than continuing to reside in her brother's apartment where she had to move under compelling circumstances on account of serious burn injuries suffered by her. Moreover, before the accident in which she had suffered burn injuries, the appellant was residing in her own flat. The Appellate Bench took notice of the fact brought on record that after filing of the suit the appellant was detected to be suffering from heart ailment and, therefore, she would enjoy staying in her own apartment rather than staying with her brother. The Appellate Bench further observed that even if the appellant's sister and niece got married and were residing at different places, and her mother had also died, that did not lead to the conclusion that the bonafide personal need of the appellant to reside in her own apartment did not survive. It may be that the premises were no longer required also for providing accommodation to her sister, niece and mother, but her own need for the premises subsisted. The Appellate Bench also recorded a finding that respondent would not suffer greater hardship than the appellant if he was evicted from the premises in question.

On these findings the Appellate Bench allowed the appeal holding that the appellant had established her bonafide personal need for the premises in question.

The respondent preferred a writ petition before the High Court of Judicature at Bombay which was ultimately allowed by the High Court by its impugned judgment dated July 27, 2004. After briefly noticing the facts of the case the High Court accepted the finding of the Appellate Bench that the appellant had not left the premises with the intention of staying with her brother permanently. The High Court also accepted the finding of fact recorded by the First Appellate Court that the appellant had no share in the flat in Ashoka Apartments and, therefore had no right to stay therein. However, the High Court was impressed by the subsequent events which were brought to its notice by a civil application filed by the respondent. The subsequent events which impressed the High Court were that the appellant's mother had died in the year 1976 and her sister-in-law had also died in the year 1982. Her brother was residing permanently in Goa to look after the ancestral family property. Of the three children of her brother, a son Lino had died during the pendency of the Writ Petition while his daughter had got married and was residing permanently at Goa. Another son of her brother namely, Brian had settled in U.S.A. as a medical practitioner. The appellant denied that Dr. Brian had migrated to U.S.A. permanently. The learned Judge held that apart from the appellant and Dr. Brian all the others who were earlier residing with the appellant had either expired or had settled down elsewhere and therefore the need of the other family members did not survive. The appellant's brother Lawrence had also died. The High Court concluded that Lawrence being a bachelor, the appellant has also inherited a share in his flat at Ashoka Apartments and thus became a co-owner having a right to reside in the flat in Ashoka Apartments. Her brother Tito no doubt was also a co-owner of the premises since he owned the premises jointly with her late brother Lawrence. In view of the fact that she as a co-owner had a right to reside in the premises, her need of her own apartment did not survive. The High Court, therefore, concluded that in the changed

circumstances and subsequent events which happened during the pendency of the Writ Petition before the High Court, the need of the appellant did not survive and, therefore the decree passed by the Appellate Court deserved to be set aside. Accordingly, the Writ Petition was allowed and the eviction petition was rejected.

Having noticed the evidence on record and the findings recorded by the Courts below we have come to the conclusion that this appeal must be allowed. The finding of bonafide personal need recorded by the Appellate Court is a finding of fact based on the evidence on record. We have considered the evidence on record and we find that the finding recorded by the Appellate Court did not deserve to be set aside. In fact, the High Court also was of the same view, but in the changed circumstances having regard to the events that took place during the pendency of the Writ Petition, the High Court interfered with the order of the Appellate Court. We hold that the High Court was not justified in doing so. It cannot be lost sight of that the premises which the appellant required for her personal bonafide need belonged to her. She was residing in those premises with other family members for many years. Unfortunately, she suffered an accident and in the absence of any other grown up male member in the family she was persuaded by her brother Lawrence to come and reside in his apartment which was one of the flats in the Ashoka Apartment and which was owned by him and his brother Tito. After residing there for several years, the appellant felt that she should not burden her brother any more and, therefore wanted to shift to her own accommodation which was then in occupation of the respondent. The Trial Court made much of the fact that the appellant had also pleaded her bonafide need of providing accommodation to other members of the family. While doing so the Trial Court completely lost sight of the fact that apart from the requirement of other members of the family, the appellant also required the premises for her own accommodation. Thus, even if the other members of the family no longer required the premises, the requirement of the appellant survived. She had every right to occupy her own premises and she could not be told that she should share accommodation with her brother in another apartment.

The High Court was in error in holding that since the appellant became a co-owner of the premises upon the death of her brother Lawrence, she had a right to reside in those premises and, therefore, her need for the premises owned by her exclusively did not subsist. The appellant has brought to our notice the fact that in September 2003, the appellant and her sister gave their consent for the transfer of the flat in Ashoka Apartments in the name of Tito their brother, who was a co-owner of the flat along with her late brother Lawrence. Even if we ignore this fact, one cannot compel the owner of the premises which exclusively belongs to her to share accommodation with a co-owner of hers in another premises. The appellant being the owner of the suit premises, her need being bonafide and reasonable, it would be unfair to compel her to share the accommodation in another premises with its co-owner. We must therefore hold that the High Court was in error in coming to the conclusion that the bonafide personal need of the appellant did not subsist.

We, therefore, set aside the impugned judgment and order of the High Court and restore that of the Appellate Bench of the Court of Small Causes, Mumbai dated June 14, 1991 allowing the Eviction Petition and directing the respondent to deliver/ vacant possession of the suit premises to the appellant. These appeals are accordingly allowed with costs.