

CASE NO.:
Appeal (civil) 7684 of 1995

PETITIONER:
SMT.PADMAVATI DEVADATTA KAMAT & ORS.

Vs.

RESPONDENT:
SHRI VIJAYKUMAR NARAYAN MEHANDALE & ANR.

DATE OF JUDGMENT: 04/03/2002

BENCH:
N. Santosh Hegde & S.N. Phukan

JUDGMENT:

SANTOSH HEGDE, J.

Before we proceed to dispose of this appeal on merits, we must record what had transpired on 11th September, 2001 for a complete narration of the facts involved in this case. In this appeal, leave was granted as far back as in the year 1995 and the matter was posted for final hearing on 11th September, 2001 on which date Shri Ramesh P. Bhatt, learned senior counsel appearing on behalf of the appellants, had argued the matter elaborately. He challenged the findings of the courts below that the appellants have acquired an alternate accommodation on the ground that the same was not based on material on record among other contentions. After hearing Shri Bhatt for the appellants and Shri V.N.Ganpule, learned senior counsel for the respondents and perusing the records, we expressed our view that we were not inclined to interfere with the concurrent findings of fact arrived at by the courts below and were intending to dismiss the appeal. Taking that into consideration, the eviction proceedings were initiated as far back as in the year 1980 and nearly 20 years had passed and the respondent-landlords were unable to get possession of the property, we were not inclined to grant any long period for the appellants to vacate the premises. At this stage, Shri Bhatt made a fervent appeal to the Court that if the appellants were to be dispossessed without sufficient time they will be put to a great hardship since immediate alternate accommodation will not be available to them. Though we were inclined to grant some short time, on a repeated plea made by Shri Bhatt, Shri Ganpule learned senior counsel appearing for the respondents very fairly acceded to the request of the appellants to grant one year's time provided, of course, the appeal in question was withdrawn. Obviously considering this offer as fair and advantageous to the appellants, Shri Bhatt accepted the same and made a submission to the Court that he will be withdrawing the appeal provided one year's time was granted to his client to vacate the premises. Accordingly, the order was passed dismissing the appeal as withdrawn and granting an year's time to vacate the premises on the appellants' filing an undertaking in the usual terms before the Registry of this Court.

After the said order was passed, certain applications were filed before this Court. One of them was on behalf of the appellants filed through the 4th appellant in which certain

allegations were made against the counsel who represented the appellants and sought their discharge. Simultaneously, an application was also filed by the counsel on record for the appellants seeking their discharge from the case in view of the allegations made against them by the appellants. Those applications have since been disposed of by us and the counsel who appeared for the appellants have been discharged on their request without accepting the allegations made against them. Those applications apart, a review petition was also filed seeking the review of the order dated 11th September, 2001 on the ground that they were not properly represented by their counsel and withdrawal of the appeal was without instructions from them. Though in the normal course grounds raised in the review petition would not have been considered as sufficient grounds to entertain a review petition, still with a view to grant an opportunity to the petitioner who wanted to argue the case himself, as an exceptional case, we decided to allow the review petition and heard the 4th appellant Dinesh Devadatta Kamat on merits of the case at length. We also permitted the said appellant to file written submissions within four weeks which he has done. We have heard the arguments of the said appellant and perused the written submissions.

The appellant's family took a suit schedule premises on rent some time prior to the year 1976. On 12.12.1977, the respondent-landlords served a notice on the original tenant seeking the vacation of the suit premises, inter alia, contending that the said premises was required by the landlord for his and his family's use and occupation. That notice was replied by the tenant alleging that the requirement put forth by the landlord was false and incorrect. In view of the said denial, the landlord was compelled to file a suit in the year 1980 in the Court of Civil Judge (Junior Division) Kalyan in Civil Suit No.174/80, inter alia, praying for possession on the ground of subletting as well as on the ground that the tenant has acquired separate accommodation. The original tenant filed his written statement inter alia denying that he had acquired a flat in Prayag Raj Apartments because the said accommodation was exclusively owned by one of his sons Sunil Devadatta Kamat and the said original tenant contended that he continued to reside in the suit premises along with his son Dinesh Devadatta Kamat. It is necessary to note at one stage that the suit came to be dismissed for default but subsequently it was restored to file. Thereafter, the suit filed by the respondent-landlords came to be decreed by a judgment of the trial court dated 28th August, 1992 wherein the court, inter alia, held that the original tenant was in possession of separate accommodation and the said tenant was not using or occupying the suit premises, hence, a decree for possession was passed in favour of the respondent-landlords.

Being aggrieved by the said judgment, the appellants herein preferred Civil Appeal No.290/92 in the Court of District Judge, Thane in Maharashtra. The Appellate Court by its judgment dated 31.1.1995 agreed with the findings of the trial court and dismissed the appeal. Therefore, the appellant filed a writ petition before the High Court of Judicature at Bombay being W.P.No.770 of 1995 which petition came to be dismissed by the High Court on 22.2.1995 holding that:

"The courts below have found that though the tenant has acquired suitable alternative accommodation in the name of Sunil, the acquisition is for the benefit of the tenant and all his family members and on that count, the decree for eviction is passed. I do not think any exception is possible to be taken to that view of

the matter especially in this writ jurisdiction. The writ petition is rejected."

It is against this judgment the appellants have preferred the above civil appeal and, as stated above, the appeal was entertained by this Court and an interim stay of operation was granted as far as back in the year 1995. Above-mentioned Shri Dinesh Devadatta Kamat one of the appellants who appeared in person contended that the findings of the courts below were perverse inasmuch as the accommodation acquired by Sunil, one of the members of the family, was exclusively for his benefit and not for the benefit of the joint family. Apart from stating the above, he has not been able to point out with reference to the records how this finding is either perverse or not based on any evidence. We notice that the three courts below have concurrently come to the conclusion that the accommodation acquired in the name of Sunil was for the benefit of the entire family and the said accommodation was a suitable alternate accommodation. Therefore, the respondent-landlords were entitled for possession of the suit schedule premises for their own use and occupation. In this regard, it may be of some relevance to refer to the finding of the learned Civil Judge in Civil Suit No.174/80 wherein he has held :

"Admittedly deceased Devadatta was tenant in the suit premises prior to purchase by plaintiff. It is also not in dispute that he resided upto 1980 in the suit premises as tenant. Dinesh married in 1989 and his wife is serving in BMC. There is no any evidence produced by the defendants like voter list or ration card etc. to show that Dinesh Kamat was residing in the suit premises during 1969. Dinesh Kamat is running the business of astrology and earning money thereby. He is also Union Leader of Organisation".

This plea of the trial court has been accepted both by the appellate court as well as writ court and this being a finding on question of fact, we do not find any reason to interfere with the same, more so when the appellant in person, who argued this appeal in the second round, was unable to point out with reference to records how this finding is either incorrect or perverse. Apart from making certain general observations as to his present status and hardship that he may suffer if eviction is ordered, this appellant was not able to point out how respondents were not entitled to the eviction sought for by them.

As stated above, after the arguments concluded, we had given an opportunity to the appellant who argued this appeal to file written submissions within four weeks from that date which, as stated above, he has filed and we have considered the same. In the said written submissions except stating that he has sufficient material to show that he continues to reside in the suit premises, he has not established how the findings of the courts below are erroneous. We do not think at this belated stage he should be permitted to produce any fresh documents that is even assuming he has some such documents and they are relevant.

Having considered the arguments addressed on behalf of the appellants both oral and written and having perused the records, we find no merit in this case.

For the reasons stated above, this appeal fails and the same is dismissed with costs.

.....J.
(N.Santosh Hegde)

March 4, 2002.

.....J.
(S.N.Phukan)

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