

CASE NO.:
Appeal (civil) 4731 of 1999

PETITIONER:
Dwarkanprasad

RESPONDENT:
Niranjan and another

DATE OF JUDGMENT: 04/03/2003

BENCH:
R.C. Lahoti & Arun Kumar.

JUDGMENT:

J U D G M E N T

ARUN KUMAR, J

The appellant as owner landlord of Premises No.79, Main Road, Nasik, instituted an eviction suit in the court of Civil Judge, Senior Division, Nasik, for a decree of eviction against the respondents herein regarding the suit premises comprising ground floor and first floor of house bearing Municipal No.79, Main Road, Nasik. According to the averments in the plaint, a portion of the suit property was given on lease vide Lease Deed dated 16.10.1971 to the defendants. The ground floor and first floor of the property along with some open space formed part of the lease in favour of defendants. The defendants had given an advance of Rs.15,000/- to the plaintiff. The advance amount was to be adjusted out of the monthly lease charges to the extent of 50%. The monthly rent was fixed at Rs.351/-. Thus, the defendants were liable to pay only a sum of Rs. 175.50 each month and the remaining half, that is, Rs.175.50 per month was adjusted towards the advance of Rs.15,000/-. The eviction suit was instituted mainly on two grounds, that is, default in payment of rent and bona fide need of the plaintiff for use of the demised premises by himself and members of his family. According to the averments in the plaint, the plaintiff constitutes a joint Hindu family comprising his widowed mother, brothers and sisters. The plaintiff required accommodation for the purpose of setting up new business in order to settle his younger brothers. The plaintiff also required the suit premises for settling his son in business. The plaintiff did not have any other premises in Nasik which could be utilized for the said requirement of the plaintiff. It was averred that plaintiff's two younger brothers were not having any independent business. They were only attending to the restaurant business carried on by the plaintiff. According to the plaintiff so many members of the family in one business were neither required nor it was profitable and advisable to have all the family members in one business. The younger brothers were competent enough to set up their own independent business and for that purpose the suit premises was most suitable.

The trial court decreed the suit on both the grounds pleaded by the plaintiff vide its judgment and decree dated 28th January, 1994. The respondent-tenant filed appeal against the judgment and decree of the trial court in the court of the District Judge, Nasik. The same was disposed of by IIInd Extra Joint District Judge, Nasik, vide his judgment dated 30th August, 1997. The lower appellate court rejected the ground regarding default in payment of rent but maintained the decree of eviction passed by the trial court on the

second ground, that is, personal bona fide need of the plaintiff-landlord regarding the suit premises. The tenant filed a petition under Article 227 of the Constitution of India before the High Court of Bombay. By the impugned judgment the High Court partly affirmed the eviction decree. The personal bona fide need of the landlord qua the requirement of half portion of demised premises for setting up business of his son was accepted while the need for setting up of business by the brothers of the landlord in the other half portion was rejected on the ground that requirement of brothers could not be considered specially when they did not have any proprietary interest in the property. This resulted in the landlord being granted eviction decree only with respect to 50% of the demised premises. The premises was split into two equal portions as per the decree of the High Court - one portion goes to the landlord by virtue of the eviction decree while the other portion remains with the tenant. The landlord has filed the present appeal against the judgment of the High Court.

The learned counsel for the appellant confined her argument to the ground of bona fide requirement of the landlord for the entire suit premises. The other ground regarding default in payment of rent is not required to be considered. The case regarding bona fide requirement of members of family of the appellant-landlord is based on requirement of his son and two younger brothers. The relevant provision is contained in sub-section (1)(g) of section 13 of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the 'Act'). The said Section is reproduced as under :

" Section 13 (1) (g):

that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any persons 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;"

The key words which are required to be interpreted are :
"for occupation by himself".

In this connection, we would like to refer to the lease deed dated 16th October, 1971 which is the starting document with respect to the relationship of the parties to the suit as landlord and tenant. The lease deed has been executed by all the family members of the plaintiff. They are nine in all and include brothers and sisters of the plaintiff, the plaintiff being the eldest son of late Gaurishankar Sharma. The mother of the plaintiff is also arrayed as a party to the lease deed along with rest of the family. Dwarkaprasad, the eldest brother of the plaintiff in the suit has been arrayed at two places in his individual capacity as also as head and karta of the joint family. Dwarkaprasad Gaurishankar Sharma is described in the lease deed as an exclusive owner of the suit property. He alone is recorded as the owner of the property in the Government and Municipal records. However as per Para 3 of the lease deed at the insistence of the tenant all the brothers and sisters of the plaintiff, that is, all the heirs of deceased Gaurishankar Sharma father of the plaintiff, were included as party No.1 in the lease deed. Further, it is averred in the lease deed that Dwarkaprasad Gaurishankar Sharma, his brothers and sisters are members of joint Hindu family of which Dwarkaprasad Gaurishankar Sharma, that is, the plaintiff is the Karta. It is further stated in the lease deed that for the needs of the joint Hindu family, that is, for marriages of two sisters of the plaintiff, settling brothers in business and for some renovations in the family

property some money was taken as advance. A sum of Rs.15,000/- was taken as advance from the tenant to meet such requirements of the family. The lease deed is an admitted document. It follows from the lease deed that the plaintiff constituted a joint Hindu family with his mother and younger brothers and sisters. They were joint in residence as well as in business. The property was being let out for meeting the financial requirements of joint Hindu family.

In the background of these facts what is to be seen is : Does the case fall within the ambit of sub-section (g) of Section 13(1) of the Act to enable the plaintiff/appellant to succeed in this case ? We have already quoted the said provision. The question for consideration would be : Are the premises in suit reasonably and bone fide required by the landlord for occupation by himself ? Really the question would be to interpret the word "himself", that is, what meaning is to be given to the word "himself" ? Is it to be confined to the plaintiff alone or can it include the requirement of family members of the plaintiff, that is, his son, brothers and sisters etc.?

According to the learned counsel appearing for the appellant, the word "himself" has to be liberally construed so as to include the requirements of the family members of the plaintiff and the said word cannot be confined to the plaintiff alone. While according to the learned counsel appearing for the respondent-tenant the need of brothers of the landlord cannot be taken into consideration specially in view of the fact that the property is owned by the landlord, that is Dwarkaprasad exclusively. Before the High Court, the counsel appearing for the tenant conceded that the need of the son of the landlord could be taken into consideration but not that of the brothers. This fact is recorded in the impugned judgment. The High Court took the view that since the plaintiff was the sole owner of the property he could not plead the requirement of his brother as a ground of eviction, that is, no eviction decree could be passed for the requirement of the brothers of the plaintiff. It is observed by the High Court that there was no warrant for taking into consideration the need of the brothers of the landlord who have no interest in the suit premises. Since it was stated in the plaint itself that the son of the plaintiff would need half of the suit premises adjacent to the main road and having frontage on the main road, the High Court accepting that the plaintiff could seek eviction regarding the need of his son, passed a decree for eviction for the half portion of the tenanted portion of the property having frontage on the main road. The eviction decree passed by the courts below was thus modified. From the impugned judgment of the High Court, it is apparent that so far as factual aspect of the bona fide need of the plaintiff qua his son and his younger brothers is concerned, there was no dispute. The only contest was with respect to the need of the brothers. According to learned counsel for the tenant their need could not be taken into consideration since they did not have any right, title or interest in the suit property. This is purely a legal question. Since there is no dispute regarding the factual aspect of bona fide need qua the brothers, we need not go into the evidence on this aspect in detail. A broad reference to the evidence on record in this behalf will suffice. Plaintiff who appeared as P.W.1 stated that he and his brothers are members of a joint family. Plaintiff is the eldest brother and Karta of the joint family. The plaintiff had four younger brothers. He also had four sons and there was need for premises for his son Jaiprakash for setting a separate business. Jaiprakash's age at the time of deposition by the plaintiff was given as 27 years. He further stated that there were about 11-12 male members in his family. The present business was not sufficient to provide work to all the family members. His Son Jaiprakash intended to set up a TV shop where other electrical goods were also to be sold, besides doing repair work. His brother Chanderbhan wanted to start a separate restaurant. The brothers were quite familiar with the restaurant business as this was the family business

started by their father which was continued by the eldest brother Dwarkaprasad. He stated that he was ready to provide finances to Chanderbhan and Jaiprakash for new starting businesses. The plaintiff also examined his son Jaiprakash as P.W.2 and brother Manoharprasad as P.W.3. They supported the case of the plaintiff.

Learned counsel for the appellant also tried to build up a case that the suit property was a Joint Hindu Family property and therefore the requirements of the brothers for their independent business could be pleaded and the suit was liable to be decreed for that reason. This argument is contrary to the specific averment in the lease deed to the effect that Dwarkaprasad is the sole owner of the property. For the view that we intend to take regarding the meaning of the word "himself" occurring in sub-section (g) of Section 13(1) of the Act, it is not necessary for us to go into this question about the ownership of the suit property any further. In our view, even as exclusive owner of the suit property plaintiff Dwarkaprasad is entitled to seek eviction decree against the tenant qua the requirement of his brothers who are joint with him as one family.

This brings us to the legal question about the meaning to be given to the word "himself" used in sub-section (g) of Section 13(1) of the Act. Normally, the rent legislations are meant for the benefit of the tenants but the rent statutes contain exceptions in favour of the landlord which give him a right to evict the tenant, the most important being to ensure that he gets payment of rent regularly and promptly and that in case the tenanted premises is required by him for his personal need, he is able to get its possession from the tenant. So the provision regarding eviction of tenant to meet the personal requirement of the landlord with respect to the premises is a provision for the benefit of the landlord. The question arises that should such a provision be construed strictly so as to confine it to the requirement of the landlord alone or can it be extended to include the requirement of members of landlords' family. In the present case, the plaintiff has pleaded right from the beginning that he constitutes a joint family with his mother and brothers and sisters. It is also in evidence that the plaintiff holds the property for the benefit of the entire family. Even when the plaintiff is sole owner of the property, it is open to him to use the property for the benefit of his larger family which includes his brothers and sisters. The respondent-tenant cannot dispute the fact about the plaintiff's constituting a joint family because it is specifically provided in the lease deed which is an admitted document. Moreover, the defendant had not led any evidence to contradict or dispute this plea. The way the case has been argued before the courts below also clearly suggests that the only objection raised on behalf of the tenant was a legal objection that the need of the brothers and sisters of the landlord cannot be considered under sub-section (g). The fact that the plaintiff constituted a joint family with his brothers and sisters was never disputed.

The ground of eviction contained in sub-section (g) of Section 13(1) of the Act has to be liberally construed. Confining it to the landlord alone will defeat the very object of the provision. At this stage, we may refer to some of the judgments of this court as well as of various High Courts which almost unanimously take the view that such a provision has to be liberally construed.

In *Institute of Radio Technology and others vs. Pandurang Baburao* [AIR (33) 1946 Bombay 212] the relevant words used in the Bombay Rent Restriction Act, 1939 were: "own occupation". It was argued on behalf of the tenant that this meant that the premises must be required by the landlord for his occupation. Repelling the argument it was observed that the words "his own occupation" mean occupation of himself and all persons who are dependant on him.

The landlord had appeared as a witness in this case and had stated that his family consisted of his son, his widowed sister, her two daughters, two daughters of his daughter and his cousin. The Court was satisfied that those persons were the plaintiff's dependants and therefore, were entitled to live alongwith him. We have already made a reference to the evidence of plaintiff in the case in hand. The plaintiffs have stated that he constitutes a joint Hindu family alongwith his mother, brothers and sister besides his own wife and children. This evidence has gone un rebutted. Therefore the word 'himself' occurring in the Act which is subject matter of the present case has to be read as himself and members of his family.

In Balbhadra Beharilal vs. Premchand Lalchand and others [AIR 1953 Nagpur 144 (vol.40)] a Division Bench of the High Court was considering the need of the widowed daughter and her children as members of family of landlords. It was observed:

"3. The main point canvassed before us was that the need of the widowed daughter and her children must be deemed to be the need of the landlord. In our opinion, the contention of the petitioner is correct and must be upheld. No doubt, after marriage the daughter passes out of the father's family and goes into that of the husband. But the fact of marriage does not sever the blood relationship which exists between a father and his daughter. The existence of this relationship does give rise to certain moral obligations. Where, in pursuance of such moral obligations, a father affords support to his daughter and her children, their needs become his needs."

In Bidhubhusan Sen vs. Commissioner, Patna Division and another [AIR 1955 Patna 496] the Division Bench held that expression "his own occupation" in Section 11(3)(a) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 cannot be restricted only to the occupation of the landlord himself but should be given wider and liberal meaning so as to include the occupation of persons who are living with the landlord and are economically dependant on him. In this case the requirement of the landlord for premises to settle his sister's son in business who was living with him was upheld.

In Baldev Sahai Bangia vs. R.C. Bhasin [AIR 1982 SC 1091] the landlord had shifted permanently to Canada, he left behind his parents and two sisters and a brother to continue to occupy the suit premises. The Delhi Rent Control Act under which the case had arisen contains a provision under sub-Section (d) of Section 14(1) to the effect that if a premises let for residence is not occupied by the tenant or any member of his family for a period of six months immediately preceding the date of filing of the eviction application, the landlord is entitled to a decree of eviction. The question arose whether in these facts could it be stated that neither the landlord nor any member of his family was residing in the tenanted premises for the past six months. It was held that the word "family" has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestor who are actually living with together in the same house.

A beneficial provision must be meaningfully construed so as to advance the object of the Act. The term "family" must always be

liberally and broadly construed so as to include near relations of the head of the family. A Division Bench of the Bombay High Court in *Kanhaiyalal vs. Bapurao* [1989 (1) All India Rent Control Journal 161] held that the term "family" must always be liberally and broadly construed so as to include near relatives of the head of the family. It would include not only the members of the landlord family but also those persons who are dependant on him and whose responsibility he has accepted.

A latest decision of this Court in *Joginder Pal vs. Naval Kishore Behal* reported in 2002 (5) SCC 397 to which one of us (R.C. Lahoti, J.) was a party takes the same view. In fact, this judgment contains a detailed resume of the entire case law on this point and holds that the expression for "his own use" occurring in Section 13(3)(a)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949 has to be liberally construed and should be given a wide and useful meaning rather than a strict and narrow construction. The requirement of a member of family of the landlord who is dependant on the landlord for purposes of residence or for economic consideration can be considered as a requirement of the landlord.

The learned counsel for the respondents was unable to dispute the aforesaid legal position nor he challenged the findings of fact arrived at by the courts below regarding the family of the landlord being a joint Hindu family and the requirement of the plaintiff-landlord to settle his son and younger brothers in business in the demised premises. He cited *Kumbhar Pragji Bechar vs. Parekh Harilal Jagjivan* reported in AIR 1974 Gujarat 84 in which it was held that requirement of a member of a family who has separated from the landlord is not the requirement of the landlord even though he is living with the landlord. This authority in fact supports the case of the appellant in as much as it is observed that where a family unit consists of a joint family wherein all members of the joint family reside together and do business in the name of the joint family, requirement of all members of the family shall be taken into consideration. The facts of the case in hand present a picture which completely fits in these observations. The exception is created when a member of the family separates from the family. In such a case requirement of such a member cannot be considered as a requirement of the landlord.

In the case in hand the landlord is the head of the family being the eldest amongst the brothers. All the brothers and sisters including mother of the landlord live with him as members of the joint Hindu family. It is his obligation to settle his younger brothers in business as it is his obligation to settle his children in business. Therefore, he can legitimately seek eviction of a tenant by pleading that he needs demised premises to settle his son and his younger brothers in business. This being the legal position, the conclusion is inevitable i.e. the plaintiff landlord must succeed and a decree for eviction is liable to be passed in his favour for the entire demised premises. Accordingly this appeal is allowed. The impugned judgment of the High Court which has granted only a decree for half portion of the suit premises is hereby modified. The landlord is held entitled to decree for possession of the entire demised premises. The decree for possession passed by the lower appellate court with respect to the entire suit premises is hereby restored. The respondents are granted three months time to vacate the suit premises and hand over its peaceful vacant possession to the plaintiff-landlord. Parties are left to bear their respective costs.