

(2001) 02 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 5281 of 1992

Anant Dagdu Sanap and Others

APPELLANT

Vs

Arvind Shridhar Ghatpande and Another

RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 10
Constitution of India, 1950 — Article 227

Citation : (2001) 3 ALLMR 147 : (2001) 3 BomCR 397

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Mr. V.S. Gokhale, for the Appellant; Mrs. Usha Purohit, for the Respondent

Judgement

A. M. Khanwilkar, J.—This petition under Article 227 of the Constitution of India taken exception to the order passed by the VI Addl. District Judge, Pune dated 23.4.1992 in Misc. Civil Appeal No. 282 of 1991.

2. The petitioners are the owners in respect of the property at 81, Old Narayan Peth, Pune. Undisputedly, the contesting respondent No. 1 is claiming through the original tenant Satyabhamabai Shridhar Ghatpande. The said Satyabhamabai Shridhar Ghatpande was tenant in respect of the premises in the above said property. It is not in dispute that the petitioners instituted insolvency proceedings against themselves. In that proceedings Court Receiver came to be appointed in respect of the property including the suit premises.

3. In the said insolvency proceedings the respondent No. 1 moved an application, being Insolvency Petition No. 12 of 1963 (Ex- 434), praying that the Receiver be directed to pay a sum of Rs. 14,000/- with interest thereon at the rate of 15% per annum to him or in the alternative It be ordered that the respondent No. 1 be paid a sum of Rs. 14,000/- and interest thereon from the sale proceeds on account of sale of the property and till such amount is paid to the respondent No. 1 charge for the said sum be kept in respect of the suit property. The said

application was rejected by the Vth Joint Civil Judge, S. D., Pune vide order dated 12.7.1991. Against the said decision respondent No. 1 took up the matter in Appeal being Misc. Civ. Appeal No. 282 of 1991. The said appeal has been allowed and the Appellate Court has ordered that an amount of Rs. 13,050/- spent by respondent No. 1 for construction of wall be adjusted in the rent amount as per section 10-D(4) of the Bombay Rent Act i.e. 1/ 4th amount of the total rent of the year should be deducted at each year towards the amount spent by respondent No. 1 for construction of the said wall until realisation of the said amount. It is further ordered that in auction sale of the suit property, in Insolvency Petition, charge of the said amount be kept on the suit property. This judgment has been taken exception to by the petitioners by way of present writ petition.

4. Learned counsel appearing for the petitioners placed reliance on the following admitted facts; that in the said insolvency proceedings respondent No. 1 had filed an application (Ex. 310A) praying that he may be permitted to carry out the repairs and/or reconstruction in respect of suit premises. The said application was granted by the Court by directing that the respondent No. 1 may carry out necessary repairs and/or reconstruction at his own costs provided he gives an undertaking in the Court that he shall not claim any reimbursement from the landlord. Respondent No. 1 later on prayed for review of the said order to the extent of the condition to spend on his own and of giving undertaking by moving application below Ex. 311. The said revision application came to be rejected. The above said orders have become final. Thereafter the respondent No. 1 applied to the Municipal Corporation for permission to repair and/or reconstruct the suit premises. In the said application the respondent No. 1 gave an assurance that he would not ask for the reimbursement of the amount spent by him from the petitioner-landlords. It is because of the said assurance/undertaking that the Corporation granted permission to the respondent No. 1 to carry out repairs and/or reconstruction. It is not in dispute that respondent No. 1 carried out repairs and/or reconstruction with regard to construction of wall in the suit premises. Admittedly the said work was completed without filing undertaking before the Insolvency Court in terms of the order passed below Ex. 310A. However, respondent No. 1, after completing the repair and/or reconstruction work, moved the present application below Ex. 434 before the Civil Judge, S. D., Pune. This application was filed on 31.10.1990 but it was rejected by the lower Court. However the Appellate Court has reversed the said order and allowed the application mainly relying upon the provisions of the Bombay Rent Act which entitles a tenant to claim reimbursement of the amount spent towards repairs and for adjustment in the rent payable from month to month.

5. From the above said admitted facts it is seen that the respondent No. 1 had not filed any suit for recovery of the amount from the landlords or the Court Receiver, but only an application for the recovery of the said amount in the insolvency proceedings. It is on this application that the Appellate Court granted prayer for recovery of the amount by placing reliance on the provisions of the

Bombay Rent Act. There can be no dispute that ordinarily a tenant would be entitled to claim for adjustment of the amount spent by him on repairs of the tenanted premises, which repairs were inevitable and carried out in compelling circumstances. But in the present case, admittedly, insolvency proceedings were pending against the petitioners. In the said proceedings Court Receiver has been appointed and he has taken over the charge of the suit property. In other words, the suit property was custodia legis. In the circumstances, respondent No. 1, though a tenant in the suit premises, was not entitled to deal with the suit property much less incur expenditure towards repairs thereon save and except with the permission of the Insolvency Court. Moreover, in the present case the Insolvency Court had granted conditional permission, therefore, it was not open for the respondent No. 1 to carry out any repairs or reconstruction contrary to the condition imposed by the Insolvency Court. Admittedly, respondent No. 1 did not file the requisite undertaking before starting the repairs and/or reconstruction work as ordered below Ex. 310A. It is relevant to note that the order passed below Ex. 310A has attained finality and was binding upon respondent No. 1. Unless the said order was modified; or the respondent No. 1 was relieved from any of the conditions placed thereunder, it was not open to respondent No. 1 to deal with the property in question in any manner. Be that as it may, the respondent No. 1 without giving requisite undertaking chose to carry out repairs and/or reconstruction in utter defiance of the said order. Moreover, the application now filed below Ex. 434, claiming for recovery of the amount, is totally contrary to the solemn assurance given by respondent No. 1 to the Municipal Corporation that he would not claim any reimbursement or recovery from the landlords in respect of expenses incurred by him for the stated repairs and/or reconstruction. It is on the basis of the said assurance and/or undertaking that the Corporation granted permission in favour of respondent No. 1 to spend on repaired and/or reconstruction. For all these reasons the " application below Ex. 434 ought to have been dismissed at the threshold. Reliance placed by the Appellate Court on the provisions of the Bombay Rent Act to conclude that respondent No. 1 was entitled for recovery and/ or adjustment of the amounts spent by him. in my view, is totally misplaced in the facts of the present case. As observed above, the present matter is governed by the provisions of the Insolvency Act and respondent No. 1 was duty bound to comply with the order passed by Insolvency Court below Ex. 310A in its letter and spirit. Expenditure incurred by respondent No. 1 on the repairs and/or reconstruction was obviously at his own peril and such act cannot prejudice the Insolvency proceedings in any manner. The Court below has clearly overlooked this crucial aspect of the matter. No doubt, ordinarily, a tenant would have been entitled to claim adjustment, but since the suit property is the subject matter of insolvency proceedings and is custodia legis it was not open to respondent No. 1 to deal with the same in any manner save and except the condition imposed by the Insolvency Court. In the circumstances, respondent No. 1 was not entitled for the relief of recovery of amount spent by him on repairs/ reconstruction of the suit property which was not In accordance with the permission of the Court, in the present case the

respondent No. 1 has acted in defiance of the condition imposed by the Insolvency Court. In the circumstances the Appellate Court committed serious error in allowing the appeal and ordering recovery of the amount.

6. For the aforesaid reasons this petition succeeds. The impugned order is quashed and set aside. Rule made absolute in above terms with costs.