

(1984) 04 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 2448 of 1979

Arjundas Jamnadas Udasi and Another

APPELLANT

Vs

Pyrarelal Bindesari Prasad Bhujwa and Amravati and Another

RESPONDENT

Date of Decision : 05-04-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10
Constitution of India, 1950 — Article 226

Citation : AIR 1985 Bom 249 : (1984) MhLj 1001

Hon'ble Judges : Dhabe, J

Bench : Single Bench

Advocate : J.N. Chandrukar, for the Appellant; P.V. Deshpande, for the Respondent

Judgement

1. This writ petition preferred by the landlord is against the order of the Resident Deputy Collector, Amravati, in an appeal under the provisions of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 (for short the Rent Control Order)

2. Briefly, the facts that the petitioner landlord filed three applications before the Rent Controller, Amravati, under Cls. 13(3)(I) and (ii) of the Rent Control Order seeking permission to give quit notice to the respondent tenant. All the three applications were consolidated for common evidence and disposal. The Rent Controller by the order dt. 30-10-1975 held that the respondent tenant was in arrears of rent for more than three months, which of rent for more than three months, which he should pay within 30 days from the date of his order, failing which the permission would be deemed to be granted to the petitioner landlord to serve the notice upon the respondent tenant to determine his lease. However, as regards the case of the landlord about habitual default under cl. 13(3)(ii) of the Rent Control Order, the same was rejected on the ground that there was no written agreement or rent note between the parties.

3. Being aggrieved by the order of the Rent Controller, refusing to grant

permission under cl. 13(3)(ii) of the Rent Control order, the petitioner landlord preferred an appeal before the Resident Deputy Collector, Amravati. The appellate Court found that in compliance with the order of the Rent Controller, directing the respondent tenant to pay arrears of rent within 30 days, the respondent tenant paid the rent in arrears and, therefore, no question survived so far as the permission under Cl. 13(3)(I) of the Rent Control Order was concerned. As regards the question of permission under Cl. 13(3)(ii) of the Rent Control Order, although the appellate Court rejected the reasoning of the Rent Controller, who held that there was no rent note on written agreement and, therefore, no question of habitual default under Cl. 13(3)(ii) of the Rent Control Order would arise, the appellate Court came to the conclusion that it was the practice between the parties that the Munim of the landlord used to go to the shop of the respondent to recover the rent, and if the landlord was out of station, the rent receipts were signed by him after he returned. In the circumstances, according to him, if there was any delay, the tenant was not responsible for the same and, as such, there was no question of any habitual default on the part of the tenant or any mental attitude on his part to remain in arrears of rent. The schedule filed along with the application under the Rent Control Order was, however, held proved by him. In view of the finding referred to above, the learned appellate Court dismissed the appeal filed by the petitioner landlord. Being aggrieved he has preferred the instant writ petition in this Court.

4. The learned counsel for the petitioner has urged before me that the appellate Court has not properly read the evidence of the landlord in the instant case. The portion from his evidence reproduced in vernacular in para 3 of his order is incomplete and, therefore, gives a picture different from what it actually is. He has brought to my notice the original deposition of the petitioner recorded by the Rent Controller. The relevant portion reproduced by the appellate Court begins with the words " it is not true" If these words are read along with the words reproduced by the appellate Court, the meaning of the sentence reproduced by the appellate Court completely changes. The original deposition shows that the landlord has denied the suggestion in cross - examination by the tenant that he used to pay the rent whenever the Munim used to come to his shop for demanding the same. The portion above the sentence reproduced by the appellate Court shows that the landlord in his cross-examination has stated that his Munim recovered the rent in his house, which is a version consistent with the version given in his examination in Chief. In the examination-in-Chief, the petitioner has stated that his Munim does not go for recovery of rent. Practice is that the tenant comes to his house and pays rent to the Munim, and obtains the receipt of the petitioner landlord. The finding arrived at by the appellate Court is thus based upon the misreading of the evidence of the petitioner landlord and is, therefore, liable to be set aside.

5. The appellate Court has rightly held disagreeing with the Rent Controller that no rent note or agreement in writing is necessary for providing the case of habitual default. Unless there is contract to the contrary, the tenant is liable to

pay to the landlord rent after the expiry of the tenancy month. The practice alleged by the tenant was that he paid the rent to the Munim whenever he came to his shop and demanded the same. In view of the fact that the above practice pleaded by the tenant is not approved, as held by me above, the finding of the appellate Court in this regard is erroneous and is liable to set aside because it is based upon the incomplete and hence wholly incorrect statement reproduced by him from the deposition of the landlord.

6. If no such practice is proved, the next question that I have to examine is whether there are defaults committed by the respondent tenant in payment of rent. In this regard it has to be seen that the schedule of defaults filed by the landlord is held proved by the appellate Court. He has held that the schedule of rent is verified from the counter-foils of the rent receipts. Turning to the schedule, it is clear that during the period from Sept. 1967 to May 1971, the rent has been paid irregularly by the tenant and particularly from Oct. 1969 the defaults are more glaring because on most of the occasions he has paid rent for two months. Thereafter no rent was paid by him for the months of June 1971 to Sept. 1971, i.e. before the application was filed under the Rent Control Order on 12-12-1971. It is thus clear that the respondent tenant is in the habit of remaining in arrears and is thus a habitual defaulter within the meaning of Cl. 13(3)(ii) of the Rent Control Order. The petitioner landlord is, therefore, entitled to permission under the said clause.

7. However, the learned counsel for the respondent tenant urged a question of law of some importance in the instant case. According to him, the petitioner landlord had no locus standi to continue the proceedings in appeal and thereafter the proceedings in this writ petition because during the pendency of the appeal before the Resident Deputy Collector, the partition of the joint family property was effected on 1-1-1976, according to which the portion in occupation of the respondent tenant had gone to the share of Narayandas, who was alone competent to continue the proceedings in the appeal. The submission is that the relationship of landlord and tenant between the said Arjundas and the respondent tenant had come to an end and after the said Narayandas became the exclusive owner of the portion in occupation of the respondent tenant, his relationship as a tenant was with the said Narayandas. This issue was raised before the appellate Court. The appellate Court by his order dt. 20-10-1976 rejected the above objection raised by the respondent tenant and held that since the said Arjundas was the landlord on the date of the application he was entitled to continue the proceedings in appeal. The same objection is again raised by the respondent tenant in this petition.

8. It may be worthwhile to note at this stage that in the writ petition filed in this Court, the writ petition is filed by both the said Shri Arjundas as well as Shri Narayandas. However, no application is made by either of the petitioners to implead Narayandas as a party in the Rent Control proceedings. The question which, therefore, has to be considered is whether after the partition on 1-1-1976

it is Narayandas alone who was entitled to continue the proceedings in appeal and further whether in his absence the proceedings were liable to be dropped. The learned counsel for the respondent has relied upon the decisions of this Court in Harikishan and Others Vs. Krishna Dhanaji Shelki and Another, and in Jagdishprasad Kesarmal Sabu Vs. Dharamdas Tharumal Hasnani and Another, to show that the subsequent events before the decision in appeal can be taken into account before passing the final order in appeal because according to him, the appeal is the continuation of the proceedings before the Rent Controller. The argument is that the subsequent event of the partition under which the original landlord Arjundas loses his character as a landlord should be taken into account and it should be held that it is Narayandas alone, who, if at all, is entitled to continue the proceedings and in his absence the proceedings continued by the said Arjundas are liable to be rejected. The principal question to be considered, therefore, is whether the petitioner No. 1 Arjundas was entitled to continue the proceedings in appeal after the suit premises were allotted to the share of Narayandas in partition on 1-1-1976.

9. The learned counsel for the petitioner has brought to my notice some decisions under O. 22, R. 10, Code of Civil Procedure, 1908, which in terms does not apply to the proceedings under the Rent Control Order. He has in particular brought to my notice the decision of the Full Bench of the Patna High Court in the case of Mahanth Sukhdeo Das and Another Vs. Kashi Prasad Tiwari and Others, . In para 25 of the decision of the Full Bench of the Patna High Court cited supra it is held that the main reason for the provision in order 22, rule 10, Code of Civil procedure, is that the prosecution of the suit cannot be arrested because of devolution of the interest of a party in the subject matter of the suit. In the case of Joti Lal Sah v. Sheadhavan Prashad Sah, AIR 1936 Pat 420, the Patna High Court laid down that a person instituting a litigation may prosecute it to its conclusion now withstanding the devolution of his interest in the property. It further held that "the litigation would continue in his name for the benefit Order 22, Rule 10, Code of Civil Procedure, gave the Court the discretion to allow or to refuse an application by the successors-in-interest to continue the litigation, leave to the successors to continue the litigation should not be unreasonably refused.

10. It is clear from the reading of Order 22, Rule 10. Code of Civil Procedure, that in case of assignment or devolution of interest, the assignee or the person upon whom the interest devolves can continue the proceedings with the leave of the Court. This itself shows that the person who has originally instituted the proceedings is entitled to continue the same as the progress of the suit cannot be arrested because of devolution of any interest upon other persons. It is further clear that the decree decides the rights of the party as on the date of the institution of the suit and, therefore, the plaintiff in a suit has right and interest to continue the suit. It is true that when the interest devolves upon his successors they will have the benefit of the adjudication in the suit prosecuted by him. It is thus clear that the general principle of law is that the plaintiff does not

lose his right to continue the proceedings merely because of devolution of his interest upon others. However, by a special provision engrafted upon the above general principle of law by Order 22, Rule 10, Code of Civil Procedure, which is an enabling provision, the successor or the assignee gets a right, if he wants, to continue or to join in the proceedings with the leave of the Court.

11. So far as the permission on the ground of habitual default of the tenant is concerned, it is relating to the right in property and not in relation to any personal right of the landlord such as one under Cl. 13(3)(vi) of the Rent Control Order wherein he can get the permission for his bona fide occupation. The second aspect to be noticed is that the adjudication on an application for permission on the ground of habitual default is an adjudication on the date of the application in the sense that the habitual default has to be seen on the date of the application before the Rent Controller. If the adjudication in regard to the habitual default has to be as on the date of the application, the interest of the then landlord Arjundas cannot be said to have ceased because on that date he was admittedly the landlord of the premises in question. He was, therefore, entitled to continue the proceedings in appeal and get adjudication as regards the question of habitual default in the instant case.

12. Looking at it from another angle, if the permission is granted to the original landlord on the basis of the habitual default pleaded by him, it would enure to the benefit of his successor as held by this Court in *Zafar Hasan v. Jatiram*, 1977 Mah LJ 84, wherein it has been held that the successor-in-interest can file a suit on the basis of the permission granted under Cl. 13(3)(I) and (ii) to the previous landlord. It is not, therefore, necessary that the successor-in-interest must continue the proceedings to get the permission himself because the permission obtained by the previous landlord would enure to his benefit after the property devolved upon him. It cannot, therefore, be said that the said Arjundas has lost his locus after the premises in question were allotted to the share of the said Narayandas in a partition effected on 1-1-1976.

13. It must further be seen that when the property was joint, the said Arjundas represented the interest of the said Narayandas also, when he preferred an application under the Rent Control Order for permission to give quit notice to the tenant. The interest of Narayandas was also being represented by him in the proceedings in appeal also. It, therefore, cannot be said that the said Arjundas had no locus to continue the proceedings in appeal. In this view of the matter, the objection raised on behalf of the respondent that the petitioner No. 1 had no locus to continue the appeal must, fail and is rejected.

14. In the result, the writ petition is allowed. The impugned orders of the Rent Control Authorities, which declined the permission to the petitioner to give quit notice to the respondent under Cl. 13(3) (ii) of the Rent Control Order are set aside. The petitioner is granted permission to give quit notice to the respondent tenant under Cl. 13(3) (ii) of the Rent Control Order. The rule is made absolute in the above terms. However, there would be no order as to costs.

15. Petition allowed.