

(1993) 09 BOM CK 0020

In the Bombay High Court

Case No : Letters Patent Appeal No. 79 of 1993 and Writ Petition No. 1116 of 1987

Baburao Sahebrao Deshmukh and Another

APPELLANT

Vs

Onkarmal Bachharaj and Another

RESPONDENT

Date of Decision : 22-09-1993

Acts Referred:

Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 — Section 13(3)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 3
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 3, 58, 59, 61

Citation : (1996) 2 BomCR 436

Hon'ble Judges : M.B. Ghodeswar, J; H.W. Dhabe, J

Bench : Division Bench

Advocate : P.C. Madkholkar, for the Appellant; A.V. Mohta, for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—Since we have heard the learned Counsel for the appellants at length, we admit this appeal and dispose it off on merits. Since the grievance of the appellants was that because of lack of communication to the advocate at Nagpur, the appellants remained unrepresented when the writ petition was heard and decided on 7-2-1989, without referring to the judgement of the learned Single Judge, in view of the submissions made on behalf of the appellants, we have gone through the entire evidence in the instant case. It is only thereafter that on the contention being raised that there was no error apparent on the face of the record in the judgment of the learned Rent Control Appellate Authority, either original or in review, that we have perused the judgment of the learned Single Judge to consider the contention raised on behalf of the appellants, whether it was open to the learned Single Judge to interfere with the orders of the above authority in his jurisdiction under Article 226 of the Constitution of India.

2. Briefly, the facts are that the respondent is a registered partnership firm which carries on business in Akola. According to the respondent, it purchased the suit shop admeasuring 367 sq.ft. by a registered sale deed dated 31-5-1976 Exhibit A-1. It purchased the said suit shop because, according to it, it wanted to run its business of grains and commission agency in the said shop which business it was previously carrying on in the rented premises belonging to Shri Narayandas Hiralal Khandelwal who had filed a suit against it for possession, in which a decree for possession of the said rented premises was passed against it. According to the respondent, the appellant No. 1 "s father Sahebrao was inducted as a tenant in the suit shop by the erstwhile owner from whom he purchased it. The said suit shop was given on rent to the said Sahebrao the father of appellant No. 1 for carrying on the Adat business in the said shop. The said Sahebrao died in the year 1962. The appellant No. 1, according to the respondent, was working as a Vice-Principal in Shivaji College, Akola. However, the appellant No. 2 who is cousin brother of the appellant No. 1, was living with Sahebrao and his family since he was 3 years old. He was working with Sahebrao in the suit shop.

3. It is the case of the respondent that from 1968-69 onwards, the said Adat business was carried on by the appellant No. 2 in the suit shop and that the appellant No. 1 did not need the same for the said purpose. Further, it is the case of the respondent that since it was required to vacate the premises belonging to the said Narayandas Khandelwal, in view of the decree for possession passed in his favour, it needed the suit shop for its business. The respondent firm therefore made an application before the learned Rent Controller, Akola under Clauses 13(3)(i), (ii), (iv), (v) and (vi) of the Central Provinces and Berar Letting of Houses & Rent Control Order, 1949 (for short, "the Rent Control Order").

4. The appellants denied the claim of the respondent-firm by filing written statement in the case. The parties led evidence before the learned Rent Controller in so far as the respondent-firm examined one Suresh (A.W. 1) on its behalf and the appellants examined themselves. The parties also filed some documents in the case.

4-A The learned Rent Controller, on the basis of the evidence on record, granted permission to the respondent-firm under Clause 13 (3), (ii), (iii), (v) and (vi) of the Rent Control Order. There was appeal taken to the learned Rent Control Appellate Authority against the above judgment of the learned Rent Controller. Since the partners of the respondent-firm were then not joined as parties, the proceedings were remanded to the learned Rent Controller where after the partners were joined as parties. The learned Rent Controller, after remand, maintained the same judgment given by him earlier. Feeling aggrieved, the appellants preferred an appeal again before the learned Rent Control Order Appellate Authority which allowed the said appeal and dismissed the application filed by the respondent-firm before the learned Rent Controller. The respondent preferred a review application, but the same was dismissed by the learned Rent

Control Appellate Authority. Feeling aggrieved, the respondent-firm preferred writ petition before this Court registered as W.P.No. 1116 of 1987 against the above orders passed by the learned Rent Control Appellate Authority, original as well as in review.

5. At the time of hearing of the aforesaid Writ Petition No. 1116 of 1987, as already pointed out, none appeared for the appellants although they were served for the reasons hereinbefore given. Therefore, after hearing the learned Counsel for the respondent-firm, the learned Single Judge, by his judgment dated 7-2-1989, partly allowed the writ petition and granted permission to the respondent firm under Clauses 13 (3), (iii), (v), and (vi) of the Rent Control Order. The appellants have, therefore, challenged the judgment of the learned Single Judge by way of the instant Letters Patent appeal, in which we have heard the learned Counsel for the appellants on merits, since the grievance was that there was no opportunity to the appellants to make their submissions before the learned Single Judge.

6. Turning to the merits of the submissions made on behalf of the appellants, the first question which needs consideration is whether the respondent-firm was entitled to permission under Clause 13(3)(iii), of the Rent Control Order. The said clause deals with the question of grant of permission for sub-letting without the consent of the landlord. The learned Counsel for the appellants has urged before us that the respondent has failed to prove that there was sub-letting of the suit premises in the instant case. He has urged before us that the appellant No. 2 was not a stranger to the appellant No. 1 and his father. He was cousin of the appellant No. 1 and was staying with his family since his childhood. He was associated with the father of the appellant No. 1 i.e. Sahebrao in Adat business which he was carrying on in the suit premises since about the year 1952 and he, therefore, continued the same business after the death of Sahebrao in 1962. It is also urged that the suit premises were used for stocking agricultural produce belonging to the appellant No. 1 and his family. It was also used for keeping the material belonging to Akshar International firm of which the appellants were the partners. For all these reasons, it is urged that there was no sub-tenancy created by the appellant No. 1 in favour of the appellant No. 2 in regard to the suit premises. It is further urged that even assuming that there was sub-letting created, there was consent of the landlord as shown by the endorsement by the landlord Kisan upon the receipts NA - 2 and NA -3.

7. In appreciating the above contention raised on behalf of the appellants, it is necessary to see that the following undisputed facts emerge on the basis of the evidence on record, led even on behalf of the appellants. It is clear from the evidence on record that the original lease in respect of the suit premises was created for carrying on the business of Adat by the original tenant Sahebrao. Originally, the licence of the suit shop was in the name of Sahebrao. Although it is true that the appellant No. 2 was working with Sahebrao since a long time, after his death in 1962, although, for quite some time, the Registration of the

shop continued to be in the name of Sahebrao, in 1968-69, the Registration of the shop was made in the name of the appellant. The appellant No. 2 was carrying on Adat business in the said shop for himself and not on behalf of the appellant No. 1 or his family. It is further on record that although initially, the appellant No. 2 was staying with the appellant No. 1, later on, he started living separately. What is material to be seen is that in his cross-examination, the appellant No. 2 has categorically admitted that he was a sub-tenant from 1968 and therefore, he had requested the landlord to grant permission to him to be treated as a sub-tenant. It is for this reason that, at the time of evidence, the documents Exhibit NA - 2 and NA - 3 were sought to be introduced without setting up the above case in the written statement, for which reason the learned Single Judge has stated that the introduction of the said document was an after-thought and created suspicion. However, what is material to be seen so far as this consent theory is concerned, is that one Nathmal-Munim and nephew of the landlord Kisan is not examined by the appellants. They have also not examined the original landlord Kisanlal. In the absence of the evidence of these persons, it cannot be held to be proved that the landlord had consented to the sub-letting.

7-A. However, the fact remains that the appellant No. 2 had admitted the sub-letting of the suit premises. Even otherwise, it is clear that the registration of the suit shop was exclusively in his name from 1968-69 and that he was carrying on there the Adat business for which this shop was let. The mere fact that because of close relationship with the appellant No. 1, the agricultural produce was allowed to be stocked there, or because the articles and goods of the Akshar Film-International, a firm, of which the appellant No. 2 himself was the partner, were kept there, it would not mean that the shop was not in exclusive possession of the appellant No. 2. The learned Rent Control Appellate Authority did not consider the question of permission under Clause 13(3), (iii) of the Rent Control Order in the light of the above material facts emerging from the evidence on record and particularly, the admission of the appellant No. 2 himself referred to above, for which reason, its finding is perverse and could be interfered with in the writ jurisdiction of this Court. In fact, it has laid undue emphasis upon irrelevant facts such as the fact that the appellant No. 2 was living with Sahebrao from his childhood, which fact has no relevance when in 1968-69, the shop was registered exclusively in the name of the appellant No. 2 and particularly when he himself admitted that he was doing Adat business there and that suit shop was sublet to him. The finding rendered in this regard by the learned Single Judge is well founded and has to be upheld.

8. As regards the question of permission under Clause 13(3)(v) of the Rent Control Order, it is not necessary for us to consider the said question, particularly when we are upholding the permission granted to the respondent under Clause 13(3)(iii) as also under Clause 13(3)(vi) of the Rent Control Order, the submissions in regard to which we shall hereinafter consider. As regards Clause 13(3)(vi) of the Rent Control Order, a strong case is made out by the respondent-firm. It is clear from the facts of the instant case that the respondent-firm

purchased the suit shop from its erstwhile owner as per the registered sale deed dated 31-5-1976, 367 sq. ft. in area, for the purpose of carrying on its business of grains and commission agency. It is clear from the evidence on record that the respondent-firm was carrying on the said business in rented premises belonging to one Shri Narayandas Hiralal Khandelwal who had filed a suit against the respondent-firm and obtained a decree for possession of the suit premises. Since the respondent-firm had thus no premises to carry on its business, its need for the suit premises was not only genuine, but urgent as rightly found by the learned Single Judge. As rightly found by him further, there were no other premises in the town where the respondent-firm could carry on the said business. The only submission made as regards Clause 13(3)(vi) is that the learned Single Judge has not considered the question of extent of the need as required by Clause 13(3)(viii) of the Rent Control Order. As regards this question of extent of need, it may be seen that the suit shop is only 367 sq. ft. in area as found by the learned Single Judge, for which reason the need of the whole of the shop has rightly been found to be genuine. The above submission made on behalf of the appellants, therefore, cannot be accepted.

9. In view of the above facts, it cannot be said that there was any error apparent on the face of the record in the finding rendered by the learned Single Judge in this regard. On the other hand, ex-facie, the finding rendered by the learned Rent Control (Appellate Authority) in regard to the permission under Clause 13(3) (vi) was illegal and perverse and was rightly set aside by the learned Single Judge in his writ jurisdiction.

10. The learned Counsel for the appellants had sought to raise a preliminary objection before us that the application before the learned Rent Controller was itself not maintainable because the other legal representatives of the deceased tenant Sahebrao were not joined as parties to the said application. It does not appear that the said question was canvassed by the appellants before the learned Rent Control Authorities. In fact, the said question should have been canvassed before the learned Rent Controller himself who granted permission to the respondent-landlord under Clause 13(3) of the Rent Control Order. The said question cannot be allowed to be raised for the first time in the instant Letters Patent appeal. Be that as it may, the appellant No. 1, after the death of his father Sahebrao, was the Karta of the joint family. He had adequately represented the interest of all the co-legal heirs. The Principle of representation of the estate by some of the legal heirs who are impleaded in the proceedings is recognised by the Supreme Court in the following cases. See:

1) Daya Ram and Others Vs. Shyam Sundari, 2) N.K. Mohammad Sulaiman Vs. N.C. Mohammad Ismail and Others, . 3) Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, .

11. In the result, we do not see any merit in the instant Letters Patent appeal and dismiss the same accordingly. No costs.