
(1979) 03 BOM CK 0017

In the Bombay High Court

Case No : Special Civil Application No's. 129 and 131 of 1975 for admission

Basantilal Chhaganlal Gujrathi

APPELLANT

Vs

Bhavaribai Raghunath Sikachi

RESPONDENT

Date of Decision : 21-03-1979

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)

Citation : (1979) 03 BOM CK 0017

Hon'ble Judges : M.P. Kanade, J

Bench : Single Bench

Advocate : M.N. Morje, for the Appellant; C.R. Dalvi, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Kanade, J.—Both these petitions are under Article 227 of the Constitution and concurrent findings of facts have been challenged, viz. as to whether the defendants are using the suit premises for the purpose other than that for which they had been leased in breach of the terms and conditions of the lease and whether the defendants had committed an act which was destructive or permanently injurious to the suit premises as a whole.

2. Few facts leading to this litigation are as under :

The respondent Bhavaribai Raghunath Sikachi, the landlady filed a suit for ejectment on the ground of non-payment of rent and contravening the terms of lease, and thirdly the change of user or for committing different acts of destruction to the suit premises. She also prayed for the recovery of a sum of Rs. 1,063/00 as arrears of rent. The monthly rent payable to the respondent was Rs. 34/-. The premises were leased out for business and also for residential purpose under the rent note at Exhibit 74. It appears that the petitioners stored some inflammable articles, like crackers or oil grass, empty wooden boxes without taking proper care. Those goods caught fire on or about November 23, 1964 as a result whereof part of the suit premises and also adjoining premises in

possession of tenant of opponent No. 1 were gutted in fire, thereby causing destruction of the suit property except in room in the rear portion of the house being House No. 20, situated in Ward No. 5 of Baramati town. Respondent therefore issued a notice on May 19, 1967 terminating the tenancy of the petitioners with effect from June 7, 1967. The petitioners failed to comply with the said notice and did not deliver possession of the suit premises. Hence, a civil suit was filed for eviction against the petitioners. Petitioners Nos. 2 and 3 are the brothers of petitioner No. 1, and therefore, they were made defendants in the suit. The said suit was resisted by the petitioners by filing their written statement. They denied the contentions and the averments made in the plaint against them. It was also contended in the written statement that the suit premises were not used for the purpose other than the one for which the same were leased and that there is no change of user and there was no negligence on the part of the petitioners. According to the petitioners, they stored crackers after obtaining a licence in that behalf. However, there was short circuit in the electric connection as a result thereof part of the suit premises caught fire and were destroyed. It is further contended by the petitioner that the respondent plaintiff had filed a suit for damages against them in respect of the destruction to the suit premises. Although the said suit was dismissed in the trial Court, it was allowed in the Appeal Court, and the petitioners' second appeal in this Court was dismissed. The petitioners have paid the damages as decreed against them. The petitioners also filed a Miscellaneous Application No. 22 of 1967 within the one month from the date of the suit notice for fixation of the standard rent. The petitioners had paid the interim standard rent in the miscellaneous proceedings.

3. The learned trial Judge framed the necessary issues at Exhibit 22, recorded the evidence of the parties and having heard them, came to the conclusion that the suit premises were used contrary to the terms of the lease. It also held that the explosives were stored in the suit premises unlawfully by the petitioners and the suit premises were damaged on account of the negligence of petitioner No. 1. It is also further held that there was a change of user. Consistent with these findings, the learned trial Judge held that the plaintiff Bhavaribai Sikachi proved her case and decreed the suit by judgment and order dated February 17, 1971.

4. Feeling aggrieved by the aforesaid judgment the petitioners preferred an appeal to the learned District Judge bearing Civil Appeal No. 331 of 1971. There was also a Revision Application Bearing No. 35 of 1971 in connection with the fixation of standard rent. Both the matters the appeal and the Civil Revision Application were heard together and disposed of by a common judgment dated September 11, 1974. The learned Extra Assistant Judge who heard the appeal, was pleased to dismiss the application as well as the appeal and confirmed the findings recorded by the trial Court. Against the said judgment and order, the petitioners submitted this Special Civil Application challenging the correctness and the legality of the findings recorded by the Appellate Court. The petitioner Basantlal Chhaganlal Gujarathi the tenant and original defendant tenant also filed Special Civil Application No. 131 of 1975 challenging the order by which the

standard rent of the suit premises was fixed. The Special Civil Application Bearing No. 131 of 1975 is not admitted but on January 21, 1979 an order is passed that "Place this for admission along with Spl. C.A. No. 129 of 1975 when it will come for final hearing".

5. Mr. M.N. Morje, the learned Counsel appearing on behalf of the petitioner submitted that the finding recorded by the learned Appellate Judge is perverse. It is submitted that having regard to the rent note at Exhibit 74, it is erroneous to hold that there is change of user. According to Mr. Morje the rent note (Exhibit 74) did not prohibit the lease of the suit premises totally as a godown. The lease of the suit premises is a composite lease for the business and residence, and business includes using the suit premises as godown. According to Mr. Morje, shops include godowns. Mr. Morje relied upon the observations of Gujarat High Court in *Mohamed Umar Abdul Rahim Narmovala & others v. Shah Manilal Gokaldas (a firm) and others*, 9 Gujarat Law Reporter 104. Secondly, it is contended by Mr. Morje that the plaintiff landlady will not be entitled to a decree of eviction in her favour on the second ground, viz. an act which was destructive or injurious to the suit premises. According to Mr. Morje the plaintiff respondent had filed a suit for damages, and a decree for damages was passed in her favour, and the petitioners defendants had paid the said damages or compensation, and therefore, that ground would not be available to the plaintiff respondent Bhavaribai for getting a decree of eviction.

6. There is no substance in any of these contentions raised by Mr. Morje. In the first instance these are questions of fact. Both the courts below concurrently held that there is a change of user and the defendants had committed Act which was destructive or injurious to the suit property. The Appellate Court had considered the evidence on record, construed the lease deed (Exhibit 74) and the Appellate Court rightly came to the conclusion that the plaintiff respondent Bhavaribai was entitled to a decree for eviction on the said grounds.

7. Mr. Morje strenuously urged relying upon the decision in *Mohamad Umar's* case (*supra*) that the Appellate Court has erroneously construed the lease deed (Exhibit 74) and thereby committed an error apparent on the face of the record. It is true that the Gujarat High Court in the above case held that the business of selling cloth necessarily implies concept of use for storing also. The said authority is not in any way helpful to Mr. Morje in the present case. It is observed that the trial Judge has found on the question of fact from the evidence led before him that the premises are in possession of defendant No. 3 since last 23-24 years; and they are used as cloth godown to the knowledge of the landlord who had continued to accept the rent from the tenants. Furthermore, there was evidence on the record that the premises were let to opponents Nos. 1 and 2 for the purpose of their cloth business and used the suit premises since about 23 to 24 years to store cloth bales and other materials relating to his business of selling cloth. In view of the said finding the Court construed that the rent note was for having a shop and also using the suit premises as godown.

8. In the present case, the rent note specifically mentions that the premises are leased out for dual purposes viz. the residence and business and trade. In this connection it has got to be noted that the suit premises were used for running a business and as a godown. The learned trial Judge on the appreciation of the evidence rightly came to the conclusion that having regard to the evidence on record, there is a clear change in the user of the suit premises and in my view rightly held that the respondent was entitled to a decree for eviction on the said ground.

9. The second ground in my view is unassailable. There was admittedly destruction of the premises. The respondent plaintiff had to file a suit for damages. The said suit was resisted by the petitioners, and the trial Court dismissed the suit, whereas in the appeal and in the second appeal the plaintiff respondent succeeded in getting a decree for damages. The case made out in the petition is that there was a short circuit in electric connection and as a result part of the suit premises caught fire and were destroyed. It is further stated that the short circuit of the electricity was due to the negligence on the part of the landlady inasmuch as she had not replaced the worn out electric fittings, and therefore, the fire was not due to their negligence. This is admittedly a false case made out in the petition in this Court. In the Appellate Court it was not disputed that it was the petitioners who had taken the electricity connection in the suit premises and it is their cases that the fire broke out due to short circuit in the electricity. It is also admitted that they have been storing inflammable and explosive articles such as Diwali crackers. It is also not disputed before me that the suit premises are not mentioned in the licence obtained by the petitioners, for storing fire crackers. The petitioners, admittedly had not applied for no-objection certificate from the Municipality for storing fire crackers in the suit premises. Under all these circumstances, it is not possible to hold that the finding recorded by the learned Extra Assistant Judge, Pune is erroneous or otherwise perverse as contended by Mr. Morje. There is no substance in the submission of Mr. Morje that the petitioners having paid the damages under the decree, the respondent will not be entitled to a decree of eviction on the ground of committing act which is destructive or injurious to the suit premises. These are two different causes of action-one for suit for damages and the other a suit for eviction. In law, the plaintiff respondent will be entitled to a decree for damages if she proves that the destruction or damages was caused because of the negligence on the part of the petitioners and u/s 13(1)(c) of the Bombay Rent Act, the plaintiff respondent will be entitled to a decree for eviction at once on the very set of facts if proved to the satisfaction of the Court.

10. In the present case, both the courts below held that the petitioners are guilty of change of user and also of committing an act which is destructive and injurious to the suit premises. These are question of fact, and I do not find any ground or error, much less an error apparent on the face of the record to interfere with the findings recorded by both the courts below.

11. In the result this application must fail.

12. Rule discharged with costs.

13. As far as Special C.A. No. 131 of 1975 is concerned it is for admission.

14. Mr. Morje, the learned Counsel submitted that must be of the portion of the suit premises is destroyed by fire and is not being used by the petitioners, and therefore, the standard rent fixed by the lower Court is not correct in law. There is no substance in the submission. The Appellate Court, on the appreciation of evidence on record rightly came to the conclusion that the standard rent of the suit premises would be Rs. 20/80 ps. per month. There is no error apparent on the face of the record, and therefore, this special civil application deserves to be rejected and accordingly, the same is rejected.