
(2015) 07 BOM CK 0073

In the Bombay High Court

Case No : Civil Revision Application No. 168 of 2007

Bhimashankar Sadashiv Shilwant

APPELLANT

Vs

Madan Singh Babu Singh Zhaveri

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2015) 07 BOM CK 0073

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : Surel S. Shah, for the Appellant; Drupad S. Patil, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.S. Sonak, J—This civil revision application challenges the judgments and decrees dated 6 August 1997 made by the Civil Judge, Junior Division, Solapur (trial Court) and 3 December 2004 made by the District Judge, Solapur, dismissing the applicant's Regular Civil Suit No. 48 of 1996 seeking eviction of the respondent inter alia on the grounds of default in payment of rent and personal and bona fide requirement.

2. The applicant instituted Regular Civil Suit No. 48 of 1986 seeking eviction of the respondent from out of the suit premises at Karmala let out to the respondent for commercial purposes. The suit for eviction was instituted on the ground of default in payment of rents, change of user and reasonable and bona fide requirement. The trial Court, by judgment and order dated 6 August 1997, has dismissed the suit. The appeal Court, by judgment and decree dated 3 December 2004, has confirmed such dismissal. Hence, the present civil revision application.

3. Mr. Shah, the learned counsel for the applicant, did not press for eviction on the grounds of default in payment of rent or change of user, but submitted that

there is overwhelming material on record which establishes that the suit premises were indeed required by the applicant to enable his son to set up the business of computer typing, STD centre, xerox copiers etc. Mr. Shah submitted that the two Courts have concurrently applied incorrect tests and further excluded relevant evidence from consideration. Further, the appeal Court has not taken into consideration the evidence which was led at the appellate stage, from which it is clear that the need of the applicant was acute, in view of the applicant's retirement from service during the pendency of the appeal proceedings. Mr. Shah submitted that the two Courts failed to take into consideration the circumstance that the respondent tenant, during the pendency of proceedings, sold certain premises belonging to him, which, the respondent tenant could have as well used for the purposes of business of sale of stationery and cutlery for which the suit premises are used. The non-consideration of this circumstance renders the findings recorded perverse. For all these reasons, Mr. Shah submitted that the impugned orders made by the two Courts deserve to be set aside and the applicant's eviction suit be decreed on the grounds of reasonable and bona fide requirement.

4. Mr. Patil, the learned counsel for the respondent, at the outset, submitted that two Courts have recorded concurrent findings of fact. Such findings are neither vitiated by any error apparent on face of record nor by perversity. Therefore, relying upon certain decisions as to the scope of proceedings under Section 115 of the CPC. Mr. Patil submitted that this Court ought not to interfere with the impugned decrees. Further, Mr. Patil submitted that the material on record clearly establishes that both the applicant and his son are well settled in Pune and there is no reasonable possibility of their commencing any business in Karmala, Solapur. Further, Mr. Patil pointed out that the applicant already has two commercial premises in Karmala, out of which one is in occupation of the applicant and the other was let out to operate a bicycle shop. Mr. Patil pointed out that the property sold by the respondent was really the share of the respondent in the ancestral property. The property was not at all capable of being used for commercial purposes and in any case the sale was necessitated to solemnise the marriage of his daughters. For all these reasons, Mr. Patil submitted that this revision application be dismissed.

5. Rival contentions now fall for determination.

6. This is a case where two Courts have concurrently recorded findings of fact that the need of the applicant is neither reasonable nor bonafide. From the record of such findings, it cannot be said that the two Courts have applied any incorrect tests or incorrect principles. The findings of fact are not contrary to the weight of evidence on record. In the exercise of revisional jurisdiction, it is not possible for this Court to re-appreciate the evidence on record as if, this Court were exercising the appellate jurisdiction.

7. This Court, whilst exercising revisional jurisdiction does not act as a Court of appeal and therefore the scope of interference with findings of fact, is quite

limited. Unless it is demonstrated that findings of fact are vitiated by clear perversity or that the view taken is manifestly incorrect and suffers from errors apparent on face of record, there is no question of any interference.

8. In the case of India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another, AIR 1978 SC 45 : (1977) 4 SCC 587 : (1978) 1 SCR 797 : (1977) 9 UJ 742 , the Apex Court in the context of exercise of supervisory jurisdiction, observed thus:

"The limitation of the High Court while exercising power under Article 227 of the Constitution of India is well settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts howsoever erroneous those may be. It is well settled and perhaps to late in the day to refer to the decision of the Constitution Bench of this Court in Waryam Singh and Another Vs. Amarnath and Another, AIR 1954 SC 215 : (1954) 1 SCR 565 where the principles have been clearly laid down as follows:

"This power of superintendence conferred by Article 227 is, as pointed out by Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, AIR 1951 Cal 193 to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not in correcting mere errors."

9. In the case of Babhutmal Raichand Oswal vs. Laxmibai R. Tarte and Another, AIR 1975 1297 (SC), in the context of proceedings between landlord and tenant under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Apex Court, relying upon its previous decision on the same subject, observed thus:

"If error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of Certiorari it should follow a fortiori that is not subject to correction by the High Court in exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a Superior Court can do in exercise of its statutory power as Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of Appeal when the Legislature has not conferred a right of appeal and made the Subordinate Court or tribunal final on fact."

10. In the case of Ashok Kumar and Others Vs. Sita Ram, AIR 2001 SC 1692 : (2001) 5 JT 87 : (2001) 3 SCALE 443 : (2001) 4 SCC 478 : (2001) 3 SCR 101 : (2001) 2 UJ 1069 : (2001) AIRSCW 1749 : (2001) 3 Supreme 488 , the Apex Court in the context of scope of interference with the findings of fact recorded by the authorities under the Rent Act has observed thus:--

"The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter

which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where order passed by the statutory authority vested with power to act quasi judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave justice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case."

11. In case of N. Eswari Rao Vs. K. Swarajya Lakshmi (Late), (2009) 12 JT 105 : (2009) 12 SCALE 512 : (2009) 9 SCC 678 : (2009) 14 SCR 500 , the Apex Court has held that it is not open to the High Court, in exercise of its revisional jurisdiction, to interfere with concurrent findings of fact of rent controller and appellate authority unless of course the findings of fact are perverse or arbitrary.

12. In the case of Rajbir Kaur and Another Vs. S. Chokesiri and Co., AIR 1988 SC 1845 : (1988) 3 JT 593 : (1988) 2 SCALE 461 : (1989) 1 SCC 19 : (1988) 2 SCR 310 Supp : (1988) 2 UJ 554 , the Apex Court in paragraph 43 has observed thus:--

"43. When the findings of fact recorded by the courts below are supportable on the evidence on record, the Revisional Court must, indeed, be reluctant to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted of and supported the one reached by the courts below. With respect to the High Court, we are afraid, the exercise made by it in its revisional jurisdiction incurs the criticism that the concurrent finding of fact of the courts below could not be dealt and supplanted by a different finding arrived at on an independent reassessment of evidence as was done in this case."

13. In the present case, the evidence on record does indicate that the applicant, at the time of institution of the suit, was a government servant serving in the Finance and Accounts Department, Government of Maharashtra. The requirement in the suit as pleaded, was for enabling the applicant's son Vinod to commence computer typing, zerox, STD business in Karmala. Admittedly, the second son of the applicant is settled in USA. The material on record does establish that even Vinod is in service at Pune. The applicant owns at least two commercial premises in Karmala, one of which is let out for a bicycle shop and the other was being used for some chilly pounding business.

14. Mr. Shah, on the basis of certain suggestions put to the respondent in the course of cross-examination, had submitted that the applicant had offered the premises where the chilly pounding business was being carried out, to the respondent, in lieu of the suit premises. Mr. Shah at the commencement of his

submissions stated that such offer, to the best of his belief stands, but that, he shall obtain instructions from the applicant. Upon obtaining instructions, Mr. Shah fairly stated that the offer does not stand, since the said premises have been disposed of or in any case are unavailable to be offered to the respondent.

15. The two Courts, on the basis of material on record have held that the applicant and his son are well settled in Pune, and it is unlikely that the applicant or his son genuinely require the suit premises to commence some business. The suit premises, as noted earlier, are situate at Karmala in Solapur at a distance of about 150 kms. from Pune. In so far as the sale of property by the respondent tenant is concerned, the evidence on record does indicate that the respondent has two sons Anand and Amol and two daughters Savita and Yogita. The marriages of Savita and Yogita were celebrated in the year 1985 and 1986 respectively. The respondent has deposed that the property which was sold during the pendency of this suit for Rs. 2,25,000/- was not suitable for commercial purpose and even the same, had two tenants.

16. The appeal Court, has on the basis of evidence tendered by the applicant and his son concluded that it is unlikely that the applicant or his son are interested in carrying on any business in Karmala. The appeal Court has observed that the applicant and his son are well settled in Pune, have got flats for their residential accommodation and the applicant's son is in service at Pune. The appeal Court has also held that the applicant's son has not even bothered to come to Karmala and to examine prospects of business. The appeal Court has also held that there is no material on record to establish as to how, the premises already owned by the applicant are not suitable for the business proposed by the applicant's son. In the light of all such material on record, the appeal Court has held that the need of the applicant or his son cannot be said to be bona fide or reasonable.

17. Although, there was no necessity to go to the aspect of comparative hardship, two Courts have noted that sale of stationery, cutlery and utensils is the only business undertaken by the respondent tenant. The respondent tenant does not have any other premises, through which to undertake such business. The two Courts have, though not in sufficient details, but made attempt to compare the financial capacities of the applicant landlord and the respondent tenant. Ultimately, the two Courts have held that there is no case made out to grant the applicant any decree of eviction on the basis of reasonable and bona fide requirement. The findings of fact cannot be said to be vitiated by any perversity.

18. Accordingly, no case is made out to interfere with the impugned orders made by the two Courts in exercise of revisional jurisdiction under Section 115 of the CPC. Civil revision application is accordingly dismissed. There shall be no order as to costs.