

(1971) 03 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 444 of 1967

Bindichand Hiralal Bhandari

APPELLANT

Vs

Babu Sadashiv Borhade and Others

RESPONDENT

Date of Decision : 11-03-1971

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(2), 12(3), 13, 14

Citation : AIR 1972 Bom 232 : (1971) 73 BOMLR 887 : (1972) MhLj 251

Hon'ble Judges : Deshpande, J

Bench : Single Bench

Advocate : M.L. Pendse, for the Appellant; S.M. Mhamane and S.K. Vaidya, for the Respondent

Judgement

1. The petitioner is the original plaintiff. On 1-9-1964 he filed a suit for possession of a shop situate in Ganji Market, Saraf Bazzar, Ward No. 6 of Ahmednagar City, bearing Municipal Committee No. 2801, City Survey No. 3093, against two defendants under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, (hereinafter referred to as the "Rent Act;) on the sole ground of defendant No. 1 tenant having failed to pay arrears of rent for more than six months in spite of service of notice u/s 12(2) of the Rent Act. It was alleged that defendant No. 2 was running the said shop as the servant of the defendant No. 1 Defendant No. 1 did not contest and the proceedings were se ex parte against him. Defendant No. 2 contested the suit, pleading that he was a lawful sub-tenant and had paid rent to defendant No. 1 and cannot be evicted for breach of Section 12(3) of the Rent Act by defendant No. 1.

2. The trial Court accepted the case of the plaintiff that defendant No. 2 was the servant of defendant No. 1 and passed a decree for eviction against both for non - payment of rent by defendant No. 1 and also a decree for rent against defendant No. 1. On appeal by defendant No. 2, decree for eviction against him was set aside by the District Judge holding that, he was a lawful sub - tenant and his

possession was protected by the Rent Act and he cannot be evicted for failure of the defendant No. 1 to comply with Section 12(3) of the Rent Act. the plaintiff challenges this decree in this Spl. C. A. under Article 227 of the Constitution of India.

3. Mr. Pendse for the petitioner contends that finding of fact as to the defendant No. 2 being the sub - tenant is vitiated by several errors. According to him, no rent agreement or rent receipts have been produced, nor attempt to lead evidence to prove direct lease agreement is even made, nor defendant No. 1 is examined to prove the grant of sub - lease by him to defendant No. 2. He contends that, reliance by the District Judge on an irregularity maintained rough note - book and un - proved documents of the Office of the Shop and Establishment Inspector, amounts to relying on hearsay evidence. I do not find any substance in this contention. The learned District Judge has relied on the evidence and defendant No. 2, his two witnesses and, also on the Registration Certificate under the Shops and Establishments Act issued in the years 1957 and 1959, showing that defendant No. 2 was running his own shop in the premises in dispute. This finding of fact does not cease to be so far the reasons suggested by Mr. Pendse. There is also no substance in the contention that the evidence of the plaintiff is not considered or that the judgment of the District Judge bristles with several misquoted extracts of evidence. None was however cited before me.

4. Mr. Pendse, however, contends that assuming that the defendant No. 2 is lawful sub - tenant, he is still liable to be evicted along with the main tenant, once the main tenant, defendant No. 1, is so found liable u/s 12(3) of the Rent Act due to his failure to pay the arrears of rent. Now, it could have been so under the ordinary law of landlord and tenant under which sub - tenant cannot possess or claim any better or independent rights apart from, the one that can be claimed through the main tenant. He has to sink or swim with the main tenant. But not so under the Rent Act. The defendant No. 2 is proved to have been a lawful sub - tenant. Sub - lease in his favour is proved to have been created before 1957. Definition of the word "tenant", in Section 5(11)(a) includes sub - tenant inducted lawfully before the amendment of Section 15(2) of the Rent Act by Ordinance No. III of 1959. It will not make any difference as to whether sub - tenant is in possession of the whole or only a part of the premises leased to the tenant. Implication of this inclusive definition is that protection afforded to any tenant against his landlord under any provisions of the Rent Act, is also available to the sub - tenant against his lessor, the main tenant, in the same manner and to the same effect, as any other main tenant himself can claim against the landlord. By creating sub - lease before the date of Ordinance No. III of 1959, the tenant ceases to furnish his landlord any cause of action for eviction u/s 13(1) (e) of the Rent Act. Such sub - leases are rendered now lawful even though these were not so when the same were created. The landlord has to suffer such sub - leases and put up with the possession of the premises or portion thereof by the sub - tenants without any privity of contract with them. Section 14 then confers a right on the sub - tenant to claim the right on the sub - tenant to claim

the status of tenants on the determination of the interest of the tenants in the premises. This right is again available to the sub - tenants, whether the landlords like it or not and in spite of them.

5. It is thus clear that the protection available to sub - tenants under the Rent Act is not the creation of the contract but is statutory. It does not depend upon sweet - will or pleasure of the landlord or the main tenant and also cannot depend on their act or omission. This protection of the Rent Act is made available independently of the rights, and acts, or omission of the main tenant.

6. Section 12 of the Rent Act affords a sort of guarantee of the continuance of the tenancy and, secondly of the possession of premises to the tenant against his landlord as long as he is ready and willing to pay rent and to abide by the term of the tenancy. Any sub - tenant also is entitled to claim the same guarantee and protection, in regard to the premises or portion in his possession as against his lessor, i.e., the main tenant. This can be denied to him only on his failure to pay rent to his lessor i.e., tenant, or on his non - compliance with the terms of the tenancy. This protection obviously cannot be denied to him on the failure to pay rent by the tenant to the landlord or breach of any terms of the tenancy by the tenant. Such act or omission of the tenant may result in the loss of protection of the Act to him in regard to the portion in possession of the tenant. This may, however, result in the determination of tenant's interest in the portion of the premises in possession of the sub - tenant and confer the status of a tenant on him. But mere non - payment of rent by the main tenant to the landlord cannot result in the liability of the sub - tenant for eviction. This militates against the guarantees and protection afforded by this very section to the sub - tenant u/s 14 which contemplates reversion of tenant's right in such contingency on the sub - tenant and not on the landlord. No sub - tenant ever will be able to either claim tenant's rights u/s 14 if his rights in the premises are to determine along with the tenant, or the landlord's act or omission without his own any such failure, act, or omission. It shall also have to be borne in mind that Section 12(3) of the Rent Act, does not appear to aim so much at landlord's right of resumption of the premises as at ensuring the receipt of the rent by him. Possession by the landlord in such contingency is more the result than the object.

7. Strong reliance is placed on the two clauses of Section 14 wherein it is said that the sub - tenant becomes tenant "on the same terms and conditions" and "subject to the provisions of the Act". The contention of Mr. Pendse that "terms and conditions" referred to therein include liability to eviction and forfeiture of tenancy incurred by the main tenant, is simply untenable. This clause can apply only after a sub - tenant, becomes tenant in exercise of the right under this section. Mr. Pendse, however contends that accrual of such rights to the sub - tenant is controlled by Sections 12 and 13 of the Rent Act and he cannot claim any independent right or protection against eviction, if the landlord succeeds in making out a case for the main tenant's eviction under any of the clauses of Sections 12 and 13 of the Rent Act. To my mind, such construction of the above

clause, "subject to provisions of this Act", of Section 14 is not warranted by the language of this section itself or Sections 12 & 13 and any such construction will render the rights and protection conferred on the sub - tenant under several provisions just illusory and ineffective. u/s 12(3) and Cls. (a) to (e) and (f), (j) of Section 13(1) of the Rent Act the tenant is liable to lose protection of the Act, if he does or omits to do the acts envisaged therein. This cannot be construed to mean that such acts or omissions of any tenant can deprive the sub - tenant of the statutory protection where impugned act or omission is not his and the sub - tenant is not shown to have been privy to the same, otherwise. Under clause (g) to (I) of Section 13(1), landlord can claim possession on proof of his need for some purpose or the other." This claim against shall have to be tested not only against the rights and the security afforded to the tenant under sub - sections (1) of S. 12 and sub - section (2) of S. 13 and other provisions such as Sections 16 to 17 - C, but the same shall also have to be tested in the light of the protection afforded to the sub - tenant in regard to the portion actually in his possession. Claim, of the landlord under clauses (k), (l) of S. 13 shall have to be examined accordingly. Any other interpretation will reduce the intended protection to sub - tenants to an absurdity. The clause "subject to the provisions of the Act" shall have to be construed harmoniously consistent with the protection given to the sub - tenants too. So construed, it can only mean that the sub - tenant will not be qualified to be the tenant u/s 14 when he also incurs liability for eviction u/s 12(3), Cls. (a) to (e), (f) and (j) of Section 13(1) of the Rent Act for some act or omission of his or when the landlord has succeeded in proving the need against sub - tenant also under Cls. (e), (h), (i), (j) of S. 13(1), in spite of Section 13(2) of the Rent Act or when absence of sub - tenants need under Cls. (k), (h) is proved about the portion in his possession. In fact it is difficult to conceive how a tenant's failure to pay rent u/s 12(3) will ever be attributable to any act or omission of the sub - tenant excepting very remotely, and how sub - tenant will ever incur liability for eviction in favour of the new landlord in such a case. There is thus no force in the contention of Mr. Pendse that the landlord is entitled to decree for possession even against the lawful sub - tenant without any act or omission of his, on mere proof of non - compliance of Section 12(3) by the tenant.

8. Mr. Pendse relies on the judgment in *Indian Coffee Workers' Co-operative Stores Ltd. and Another Vs. Bachoobai Cowasjee Dhanjeeshaw and Others*, to support his contention. Landlord in that case has succeeded in getting a decree for possession against the tenant and sub - tenants on the ground of unlawful subletting and unauthorised construction. In the meanwhile Ordinance No. III of 1959 was enforced and the sub - tenants claimed protection u/s 15(2) of the Rent Act, in their Spl. C. A. to this Court. Protection was denied to them by this Court in view of the finding of fact that sub - tenants also had incurred forfeiture of their rights by being party to the said unauthorised construction. It was held that the sub - tenant could not claim protection of the Act when they had failed to observe the terms of the tenancy. This is the only and true ratio of the Division

Bench judgment and it does not run counter to what I have held above. With respect I agree with the views of Division Bench so far.

9. But Mr. Pendse relies on the observations in the last two paras of the judgment at page 340 of the report. Apparently reading thereof creates an impression of these supporting his condition. On close reading, however, observations are neutral. None in fact militates against what I have said above. But the judgment ends with the following conclusion :-

"In our view, therefore, even on the assumption that the tenant defendant No. 1 had effected the alterations, since the landlord became entitled to possession defendants Nos. 2 and 3 cannot have the protection of Section 14."

These observations in the last two paras can assume different complexion if read in the light of the above conclusion. These, can be construed to mean that the landlord need not prove any act or omission of the sub - tenant, once any act or omission of the main tenant furnishes cause of action to the landlord to claim a decree for possession. With great respect, I do not agree with this view, if these observations really so mean. But in view of the controversy and the decision in the said case as summarised above, these observations were not necessary. These observations really do not constitute the ratio of the judgment in view of the principles laid down in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, and *Quinn v. Leathem*, 1901 AC 495. Secondly, I have no quarrel with the broad principles that, rights of sub - tenants u/s 14 are controlled by Sections 12 and 13 of the Rent Act, or that if the landlord is entitled to possession under the said provisions, sub - tenant's rights u/s 14 must yield. Question, as to what extent, the landlord's right under Sections 12 and 13 are also affected by the protection given to the sub - tenant, did not fall for, and have not received consideration, in the above judgment and hence, these observations cannot have any binding effect. I therefore do not think it necessary to refer this matter to a larger Bench.

10. I find some support to my view in the judgment of Bhasme, J. in *Mangharam Chuharmal Vs. B.C. Patel and Others*, who also found difficulty in agreeing with the above views of Division Bench. Learned Judge has also recorded express dissent therefrom.

11. Rule is accordingly discharged. No order as to costs.

12. Rule discharged.