

(1971) 01 KAR CK 0012

In the Karnataka High Court

Case No : Civil Revision Petition No. 1158 of 1968

C.V. Hayagriv and Another

APPELLANT

Vs

Mysore Silk Museum Regd. Partnership Firm, Bangalore

RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21 (1), 21 (1) (h), 50

Citation : AIR 1971 Kar 227 : (1971) 1 MysLJ 322

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : S.K. Venkataranga Iyenger and M.L. Venkatanarasimhaiah, for the Appellant; V. Krishna Murthy and V. Tarakaram, for the Respondent

Judgement

K. Jagannatha Shetty, J.—This revision petition u/s 50 of the Mysore Rent Control Act, 1961 (herein referred to as "the Act") is directed against the appellate order of the First Additional District Judge, Bangalore, in H. R. C. Appeal No. 118 of 1966, reversing the decision of the Munsiff, Civil Station, Bangalore, in H. R. C. No. 197 of 1964 in a proceeding for eviction of the respondent.

2. The petitioners are the partners of a firm called Messrs. C. Krishnaiah Chetty & Sons, carrying on the business of Jewellery and silverware in the Commercial Street, Civil Station, Bangalore. The respondent-firm Messrs. Mysore Silk Museum, is occupying the schedule premises as a tenant of the petitioners, who brought an action for eviction on lie ground that consequent on. the coming into force of the Gold Control Order in 1963 and other circumstances, their Jewellery business had diminished, to such an extent that it became absolutely necessary for one of them to turn to another business for which the schedule premises are required. It is also stated that though they made, at a heavy cost, additions and alterations with fixtures, and electrical appliances such as air-conditioning, in their premises for more effectively carrying on their jewellery and silverware business, the Gold Control Order was suddenly promulgated, and their business was affected so much that the first petitioner is under a compelling necessity to

start a business in cloth.

3. The tenant resisted the petition inter alia contending that the business of the petitioner is not affected as a result of the Gold Control Order. The intention of the petitioners is neither bona fide nor reasonable. It is a device actuated by oblique motives to secure higher rentals. Reference is also made to an earlier attempt of the petitioners for eviction by issuing a quit notice dated 15-7-1960 which was, however, not followed by any proceedings. A plea of greater hardship is also taken.

4. The oral evidence adduced by the parties consisted of the evidence of P. W. 1 the first petitioner for the petitioners, and of Mr. Barwani R. W. 1 and Sri Y. Siddappa, a lawyer R. W. 2, for the respondent.

5. The learned Munsiff while accepting the evidence of P. W. 1, held that the premises are required by the petitioners to start a doth business in view of the promulgation of the Gold Control Order, affecting their family business. On the question of comparative hardship, he held that though the tenant has a large investment and a heavy stock and goodwill in the premises, it had not been able to show that it was unable to get any other premises. On appeal by the tenant, the order of eviction was set aside by the learned District Judge. In the appeal, the tenant produced some additional evidence consisting of some advertisements made by the petitioners in the newspapers of the month of December, 1966 following the relaxation of the restrictions under the Gold Control Order. The petitioners opposed the admission of this additional evidence. The learned District Judge has not placed any reliance on those newspaper advertisements, but has taken into consideration the subsequent event, namely, the relaxation of the restrictions under the Gold Control Order. By taking note of that subsequent event, he said that there is practically no restriction in the manufacture and preparation of gold jewellery and the embargo having been lifted, the cause of action for the petition has disappeared. He also recorded a finding that oral evidence of P. W. 1 is insufficient to hold that the petitioners really suffered any set back in their business. In his opinion, the petitioners were not inspired by any bona fide motive but their intention was to enhance the rentals, if possible. The correctness of these findings is challenged by Mr. Venkataranga Iyengar, learned counsel for the petitioners.

6. The learned counsel submitted that the claim of the petitioners for possession of the schedule premises must be taken to be prima facie bona fide and it is for the tenant to prove that that intention is otherwise.

7. In my view, it is not a correct view of the law having regard to the scheme of the Act. The whole object of the Act is to provide for the control of rents and evictions of the tenants etc., Section 21 (1) while placing an embargo against the landlord from evicting a tenant, recognises in its proviso the various circumstances under which a landlord may seek to recover possession of the premises from his tenant. The ground upon which the petitioners sought eviction

in the present case was based on Section 21 (1) (h) of the Act, the relevant portion of which reads as follows:--

"21. Protection of tenants against eviction.--

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or other authority in favour of the landlord against the tenant;

Provided that the Court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely:--

(h) that the premises are reasonably and bona fide required by the landlord for occupation by himself or any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust, that the premises are required for occupation for the purpose of the trust or

From the above provisions, it is clear that whenever a landlord comes with an application for eviction of his tenant, the burden is always on him to prove all the ingredients which entitle him to seek eviction.

8. In *Central Tobacco Co., Bangalore v. Chandra Prakash* (1969) 1 SCWR 1142 : AIR 1971 NSC 88, the Supreme Court while dealing with the scope of the relevant provisions of the Act has stated as follows:--

"The whole object of the Act is to provide for the control of rents and evictions, for the leasing of buildings etc., and Section 21 specifically enumerates the grounds which alone will entitle a landlord to evict his tenant. Clause (h) of Section 21 contains one of such grounds, namely, that the premises are reasonably and bona fide required by the landlord for occupation by himself. The onus of proof of this is certainly on the landlord." (Page 1147).

9. The learned counsel for the petitioner in support of his contention has relied on the decision in *Tarachand Singhal Bros & Co. v. M. V. Bhaskarachar* 1962 40 Mys LJ 469 and particularly on the following observations at page 474:--

"If, therefore, it is not the intention of the landlord to defeat the purposes of the statute by trying to exact higher rents or other monetary benefits in contravention of the statute by holding out a threat of eviction, his claim for possession may be taken to be prima facie bona fide. For the rest the question is whether there is a genuine need which, in my opinion, is what the statute means when it states that a landlord may apply for possession if he "requires" the building for his occupation if it is a residential one, or for his business if it is a non-residential one. There is nothing intrinsically wrong or mala fide in a person

desiring to occupy his own building for purposes of his business if he finds that the rented building occupied by him is either insufficient or inadequate for the purpose of his business or is less advantageously situated from the point of view of his business than his own premises let out to another person."

The above observation does not help the petitioners in the instant case. This is not a case where the petitioners have come forward with the case that they are residing in a rented building or in one which is inadequate or less advantageously situated from the point of view of their business. The petitioners have come forward with a specific case that their family business in jewellery has dwindled to such an extent that the first petitioner is under a compelling necessity to start a new business in cloth. Whether the business has dwindled to such an extent as stated by the petitioner is a question of fact which must be satisfactorily proved by them by placing acceptable evidence before the Court. It is not enough for the learned Munsiff to take judicial notice of the general decline in jewellery business consequent on the promulgation of the Gold Control Order. The petitioners are the partners of a firm which must be maintaining its accounts. Whenever there is the best evidence available, oral evidence cannot be a substitute for the same. In that regard, the learned District Judge is right in holding that the petitioners have not placed the best evidence which is in their possession.

10. But, the learned District Judge fell into an error in presuming that in view of the relaxation of the conditions under the Gold Control Order, the cause of action for the eviction petition has disappeared. Whether the petitioners are able to get back to their original business in view of relaxations is a matter which cannot be presumed but an opportunity ought to have been given to the parties to produce evidence.

11. This takes me to the question of the correctness of the finding of the learned District Judge that the attempt of the petitioners is only a device to get enhanced rentals. That finding is based mainly on Exhibit D-1 the earlier quit notice and the evidence of Sri Siddappa, R. W. 2. The contention of Sri Venkataranga Iyengar was that the evidence of R. W. 2 was not fully considered. His contention, cannot be said to be incorrect. I may however, observe that the approach of the learned Munsiff on this question is not correct. After having come to the conclusion that the premises are required by the petitioners for their bona fide use and occupation, he discussed the evidence of the tenant and disbelieved it. If the evidence of the tenant is to be adjudged after the final finding of the Court on the question of bona fide use and occupation, there is no use of considering it. It has to be taken into consideration before arriving at a final finding on the question of bona fide requirement of the landlord.

12. On the question of comparative hardship, there is no finding by the learned District Judge since he came to the conclusion that the petitioners have not proved that the premises are required for their bona fide use and occupation. The learned Munsiff seems to have proceeded on the then prevailing view of the law that it is for the tenant to establish greater hardship when the landlord has

proved his bona fide requirement. This is evident from the observation in the judgment of the learned Munsiff that the "respondents who have pleaded hardship have to show that they have not been able to get any other premises." This view is no longer a good law in view of the enunciation made by the Supreme Court in (1969) 1 SCWR 1142 : (AIR 1969 NSC 88), this is what has been stated:

"We see no sufficient reason for holding that once that onus is discharged by the landlord it shifts to the tenant making it obligatory on him to show that greater hardship would be caused to him by passing the decree than by refusing to pass it."

Again, at page 1149, their Lordships have observed:

"Sub-section (4) of Section 21 enjoins upon the court to consider all the circumstances including whether "other reasonable accommodation was available for the landlord" as well as whether similar accommodation was available for the tenant"

13. Since in my opinion, both the Judgments are not satisfactory, I allow this revision petition, set aside the judgment of the learned District Judge and that of the learned Munsiff and remand the case to the learned Munsiff for fresh disposal according to law and in the light of the observations made above.

14. The parties are at liberty to produce further evidence but it must be confined to the pleadings already on record and on the subsequent event, namely, the effect of the relaxation of the conditions under the Gold Control Order on the jewellery business of the petitioners. The learned Munsiff is directed to dispose of the case as expeditiously as possible. It should not be understood to have expressed any opinion on any of the points which are required to be considered in the case. No costs.