

(1964) 11 BOM CK 0007

In the Bombay High Court

Case No : Civil Revision Appln No. 953 of 1960

Gangabai Tokarsy

APPELLANT

Vs

Gaurishankar Chhintarmal Gupta

RESPONDENT

Date of Decision : 27-11-1964

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29, 31
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11

Citation : AIR 1966 Bom 34 : (1965) 67 BOMLR 231 : (1965) ILR (Bom) 895

Hon'ble Judges : Tulzapurkar, J; Patel, J

Bench : Division Bench

Advocate : T.N. Walawalkar, for the Appellant; P.G. Bhimrao, for the Respondent

Judgement

Patel, J.

(1) The present application arises out of suit filed by the a petitioners against the Respondent for eviction on three grounds - (a) arrears of rent for more than six months, (2) alterations in the premises without the permission of the landlord and (3)- for non = payment of water charges. The case is governed by the Bombay Rent Hotel and Lodging House Rates Control Act 1947 to which we will refer as the Rent Act. The Defendants - Opponent resisted the eviction and one of the contentions was that the notice to quit was bad in law. The learned trial judge dismissed the suit holding that the notice was bad in law. He also rejected the other contentions of the plaintiff. The plaintiff appealed under S,. 29 of the Act. The learned appealed under S. 29 of under O. 41 R. 11 of the CPC Summarily without assigning any reasons whatsoever for rejecting the appeal. This revision application comes before the against this order.

(2) It is very regrettable that a revision application should take almost 5 years for being heard in such petty that a matter. One only wonders at the patience of the litigants who must be seriously affected by the delays of the litigation. The main ground urged to by Mr. Walawalkar is that the learned Judges while rejecting his appeal summarily do not give any reasons whatsoever for the same

while they were bound to give on the other hand it is contended for the a opponent that it is not necessary for the appellate Bench to given reasons while rejecting an appeal. The question is of some importance and therefore it was ordered to be heard by a Bench.

(3) Order 41. R. 11 which deals with the dismissal of appeals at the stage of admission does not given requires that the appellate court should give reasons while dismissing an appeal summarily but the High Court has under the High Court the Act framed circulars - Civil Circular 51 of 1890 of by which a subordinate court dismissing appeal summarily is required to give reasons for the same. The CPC was recast thereafter by the present code of 1908. This court in Hanmant Rukhmaji v. Annaji Hanmant, ILR 37 Bom 620 held in a full circular was not affected in any in any by the provisions of the present code. That and in C.R. A. No. 589 of 1955 dated 1-2-1955 (Bom) J.C. Shan J. Held that the same law applies to the small cause court in Bombay, dealing with an appeal under the Rent Act.

(4) Under S. 31 of the act the court has to follow the prescribed procedure i.e. the procedure prescribed by the Act rules framed under it, chapter IV of the rules deals with small cause court at Bombay and R. 9 prescribed that the court in appeals shall follow as far as may and with necessary modifications the practice and procedure prescribed for appeals by the code itself does not contain any provisions requiring the Appellate court to write reasons while rejecting an appeal It is therefore argued by the that the Appellate court to court is not required to give any reasons whatsoever for rejecting to give any reasons whatsoever for rejecting an appeal. This arguments cannot be accepted the court under the Rent Act it is a special court different from the small cause court as such and is not government by the presidency small causes court Act restrictions, therefore regarding the applicability of orders and circulars of the High Courts to small causes court in Bombay does not apply to the Bench hearings in appeals under the Rent Act. As a court subordinate to the High court it is bound by the circulars issued by the High Court it is not functioning as small causes court as any other subordinate court. After the Hanmant Rakhmaji's case in ILR 37 Bom 610, the decisions in Tanaji Degade v. Shankar Sakharan ILR Bom 116 Cannot regarded as good law.

(5) It is then contended that the circular had been issued under the powers vested in the High court in under the High Court Act 1861 and since the said Act has been replete by the government of India Act, 1915 and 1935 and the constitution of 1950 which do not contain similar, provisions of it cannot be regarded as good law. Section 15 of High Court in relation in the subordinate court and it provides amongst the practice and proceedings of such court. And the rules so made shall be observed by the said courts. Section 107(c) of 224(b) of the Government of India Acts of 1915 and 1935 and Articles 227(b) of the constitutions are in the terms as above exceptions the latter parts quoted above. That however, cannot in our view make any difference since it could not been

intended that the high Court should make a rule in vain.

(6) There is nothing inconsistent in O. 41 of the CPC which should be rendered the rule invalid. The court hearing appeals under S. 29 is bound to obey the rule of practice framed by the High Court.

(7) It is contended on the authority of the decision on the Trimbak Balwant Vaidya Vs. Emperor, that circulars issued by the High Court have not the same efficacy as rules framed under the rule making power of the High Court under the civil procedure code. It is, therefore, said that the mere fact that the circular is held to be applicable the Court is not bound to follow it. There is no substance in this contention the ratio is no substance in his contention. The ratio of the case cannot apply to all circulars merely because they are included in the civil Manual Fawcett. J. Makes it clear that "unless it is passed under some enactment which gives it the force of law obviously the mere fact that a circular is issued under the authority of the High Court is not sufficient to give it that force." Circular 95 which is reproduced in R. 410 of the circulars was issued by the High Court under 1861, which power still continues in the High Courts and is therefore binding on the subordinate courts. A reference was made to the decision of the Chief Justice in Hussain Sab Vs. Sitaram Vigneshwar, in this connection the learned Chief Justice was considering the question as to the court to which an application for amendment of a decree is to be made in cases where an appeal was dismissed summarily under Order 41 R. 11. That has nothing to do with manner in which an appeal should be summarily dismissed.

(8) Apart from this, matters which arise under the Rent act are very important and often involve large claims important rights. Even if it has got revision jurisdiction in the such matters. If no reasons are assigned the High Courts is not in a position to ascertain how the court without assistance from the judgment of the subordinate court has to waste much time in investigating the matter which can hardly be justified. In order that the appeal court should assist the High court it ought to record its reasons in short even when it dismisses the appeal summarily.

(9) The effect of not requiring to give reasons can be appreciated in case like the present. The trial court held that the notice was bad on the ground that it was only by the notice that the permitted increases were demanded by the landlord. In the view of the trial court, before a notice is given there must be an earlier intimation of the increase in the standard rent which apparently, is not warranted by the Rent Act. Certainly the question is a very important question and unless the Appellate court gave it reasons why it agreed with the trial court the High court would not be in a position to know how the appeal was disposed of. We may incidentally point out that in Rajpati Sudama v. Taj Mohamed Rustom Khan 66 Bom LR 258, this court disagreed with the small causes court and held after considering the relevant provisions of the Rent act that it is not necessary to give intimation of the permitted increases and of the permitted increasing before sending a formal notice to the before the filing of suit.

(10) We therefore set aside the order of the Appellate Bench and direct that it will rehear the appeal and dispose of in accordance with the law.

(11) Costs costs in the cause.

(12) Appeal remanded by for rehearing.