
(1951) 12 GUJ CK 0005
In the Gujarat High Court
Case No : Second Appeal No. 24 of 1951

Haji Ayub

APPELLANT

Vs

Devji Bhanji

RESPONDENT

Date of Decision : 13-12-1951

Acts Referred:

Contract Act, 1872 — Section 2, 73
Specific Relief Act, 1963 — Section 19

Citation : (1951) 12 GUJ CK 0005

Hon'ble Judges : Chhatpar, J

Bench : Single Bench

Advocate : H.P. Mankad, for the Appellant; D.U. Shah, for P.N. Soneji, for the Respondent

Judgement

Chhatpar, J.—This second appeal arises out of a suit filed by the Respondent for specific performance of a contract to lease and in the alternative for damages. The Respondent was a tenant in respect of three shop premises situated in a building belonging to the Appellant in Sanganva Chowk, Rajkot. He was running a Hotel therein in the name of "Mahakali Hotel". The Appellant wanted to demolish the building and construct a new building with intention of having "inter alia" a Cinema house thereon. On 10-1-47 an agreement was arrived at between the parties, whereby the Respondent agreed to vacate the premises and pay up the rent upto the date of his vacating and in consideration of his undertaking the Appellant on his part agreed to give the first option to the Respondent to have the lease of similar shop premises to be constructed in the new building at the market rate of rents. The Respondent performed his part of the agreement and actually vacated the premises and he has also paid up the rents. This is admitted by the Appellant's Advocate. The Appellant was not alone to construct the Cinema house but he did construct the shop premises on the site where the shops formerly let to the Respondent, existed. Instead of giving the first option to the Respondent, the Appellant agreed to let the shop in the new buildings to one Kanji Giga on a monthly rent of Rs. 250. As soon as the Respondent came to

know of this agreement, he objected and gave notices; failing to get any relief, he filed the present suit for specific performance of the contract and in the alternative for damages. The trial Court refused the prayer for specific performance but gave a decree for damages for Rs. 647-8-0. Both parties filed appeals against this decree, the Plaintiff Respondent claiming specific performance, while the Appellant Defendant objecting to the decree for damages. Both the appeals were dismissed by the District Court. Against this decision, the Appellant-Defendant has alone filed the present appeal.

2. The learned Advocate for the Appellant has raised two points: First, that the agreement (Ex. 7) in The case is not a contract in as much as the final terms between the parties relating to rent were not fixed and further that it was enforceable only at the option of one of the parties. Both the lower Courts have held on this issue against the Appellant. The contract is clearly for consideration and satisfies all the necessary requirements of Section 2, Contract Act. It is clear that in consideration of the Plaintiff-Respondent agreeing to- vacate the shop premises, which he has done in fact, the Defendant-Appellant agreed on his part to give the premises on rent to the Respondent if the Respondent so desired. The Respondent, in fact, notified his desire to take the premises on rent. The mere fact that the rent was to be fixed according to the market rate does not make the contract incomplete. The Appellant has clearly committed a breach of the contract in giving the premises on rent to a third party without giving an option to the Plaintiff-Respondent. The first objection consequently fails.

3. The second objection urged by the learned Advocate for the Appellant is on the question of damages. He has pointed out that, there is no evidence as to on what basis the Court has granted damages at Rs. 647-3-0. The damages have been apparently fixed according to the court-fee paid by the Plaintiff on the plaint. Now it is settled law that compensation u/s 19 Specific Relief Act has to be assessed in the manner as in a breach of contract u/s 73, Contract Act. Vide in this respect the case of -- Ramchandra Lalbhai v. Chinubhai Lalbhai AIR 1944 Bom 76, wherein Chagla J. observed:

Under Section 19 when the Court comes to the conclusion that specific performance ought not to be granted and that the contract between the parties is broken, the Court would grant compensation to the wronged party provided he is entitled to compensation for the breach. Therefore it is not enough for the Plaintiff in a suit for specific performance merely to establish that the contract has been broken. He must go further and establish that he is entitled to compensation. In deciding whether the Plaintiff is entitled to compensation, the principle that the Court must adopt is the same that underlies Section 73, Contract Act, that is to say, the Plaintiff is bound to prove some loss or damage.

To the same effect are the decisions of the Nagpur, Patna and Madras High Courts vide AIR 1937 243 (Nagpur) ; -- Jado Prasad and Others Vs. Jamuna Prasad Singh and Others, and -- W. Jayaraghavan Vs. The Leo Films, . All. these decisions lay down the necessity of proof of actual loss or damages suffered by

the Plaintiff. There may be some cases. as observed by the Bombay High Court where the injury may not be assessable in terms of money. In such cases the injured party should not go without any relief, but the Court will award him nominal damages.

4. In the present case the learned Advocate for the Respondent is obliged to admit that this proof is wanting. The Plaintiff himself has not stated in what manner he has suffered loss, what his earning was from the hotel of which he was deprived by the action of the Defendant. It appears that both the parties were concentrating in the trial Court on. the question of specific performance of the contract and in fact there was no issue about what damages should be awarded to the Plaintiff, in case the specific performance was refused. It seems a bona fide omission on the part of the Plaintiff and the learned Advocate for the Appellant himself suggested that the matter might be remanded to the Court for the determination of compensation u/s 19, Specific Relief Act. The lower appellate Court has not tackled this issue seriously beyond stating in general terms that the Shops were situate in one of the busiest localities of Rajkot and to possess a premises in which a new up-to-date hotel can be opened is a very good asset to any owner of a hotel.

5. Under the circumstances, I think in the interest of justice, I should give an opportunity to the Plaintiff to prove what compensation should be awarded to him. I accordingly set aside the judgments of the two lower Courts and direct the trial Court to raise a specific issue viz., "what compensation should be awarded to the Plaintiff u/s 19, Specific Relief Act," and to decide it in accordance with law. Costs will abide by the result of the case.