

(2013) 01 GUJ CK 0038

In the Gujarat High Court

Case No : Civil Revision Application No. 79 of 2010

Harishchandra Ambalal Shah and Another	APPELLANT
Vs	
Rameshchandra Jesingbhai Bhojak	RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29(2), 5(11)(c)(i)

Citation : (2013) 1 RCR(Rent) 639

Hon'ble Judges : A.J. Desai, J

Bench : Single Bench

Advocate : Bn Limbachia, for the Appellant;

Judgement

A.J. Desai, J.—By way of the present Revision Application under Section-29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act" for short), the original defendants/appellants - tenants have challenged the judgment and order dated 2.4.1999, passed by the learned Judge of Small Causes Court No. 11 at Ahmedabad, in H.R.P. Suit No. 1782 of 1990, by which the decree of eviction of the residential premises has been passed as well as the judgment and order dated 21.4.2008, passed by the Appellate Bench of the Small Causes Court, in Civil Appeal No. 114 of 1999, by which the appeal preferred by the appellants - original defendants- tenants has been dismissed and the judgment and decree passed by the Trial Court in favour of the respondents - plaintiffs - landlord has been confirmed. The facts of the present case are briefly stated as under:

1.1 That the present respondents, being land lords of the suit premises, had filed an H.R.P. Suit No. 1782 of 1990, in the Small Causes Court at Ahmedabad and prayed for a decree of eviction against the defendants/appellants-tenants, who are husband and wife, on various grounds, such as, arrears of rent; bona fide requirements of the landlords; tenants have acquired an alternate suitable accommodation as well as non-using of the suit premises without any reasonable

cause for a continuous period of six months immediately preceding the date of filing of the suit.

1.2 The said suit was opposed by the petitioners/defendants - tenants by filing a Written Statement at Exhibit-14 wherein the contentions raised by the respondents/plaintiffs - landlords were denied. The learned Trial Court, by considering the pleadings of the parties, framed issues at Exhibit-22. The plaintiff examined himself through his Power-of-attorney holder at Exhibit-23 as well as a neighbour of the landlord at Exhibit-24. The defendant got himself examined at Exhibit-31.

1.3 The Trial Court after considering the record and proceedings as well as the depositions of the witnesses, passed a decree of eviction on 2.4.1999 on the ground that the suit premises was not used by the tenants for a continuous period of six months preceding to filing of the suit without any reasonable cause as well as on the ground that the tenants had acquired an alternate suitable accommodation for their use.

1.4 The said decision was challenged by the petitioners - defendants - tenants by way of filing a Civil Appeal No. 114 of 1999 before the Appellate Bench of the Small Causes Court at Ahmedabad. The Appellate Bench, after framing the points for determination, came to the conclusion that, the Trial Court has not committed any error in decreeing the suit in favour of the plaintiffs -landlords and dismissed the appeal of the petitioners/defendants - tenants.

1.5 Feeling aggrieved by the concurrent findings of facts recorded by the courts below, the petitioners/defendants - tenants preferred the present Revision Application. Though, the notice was served on the respondents - landlords, neither they have remained present before this Court nor engaged any Lawyer on their behalf and, therefore, I have heard Mr. B.N. Limbachia, learned Advocate, appearing for the petitioners - tenants.

2. Mr. Limbachia, learned Advocate, for the petitioners - tenants, has mainly argued that the suit was barred by non-joinder of parties. He submitted that the suit premises was rented to the father of the petitioner No. 1 and after the death of his father in the year 1977, he was residing in the suit premises with his mother, two brothers and one sister and, therefore, all legal heirs of the deceased-tenant, the plaintiffs - landlords ought to have joined them as parties in the suit being necessary parties. It is submitted that they are the legal heirs of the deceased tenants and as per the provisions of Section 5(11)(c)(i) of the Rent Act, they are to be treated as tenants and, therefore, the learned Trial Court, ought to have dismissed the suit on the sole ground. Mr. Limbachia, learned Advocate for the petitioners has also tried to assail the judgments of the courts below on the finding of fact with regard to non-using of the suit premises as well as acquiring an alternate suitable premises by the petitioners/defendants - tenants.

3. I have heard learned Advocate Mr. Limbachia, appearing for the petitioners

and have gone through the judgment and decree passed by the Trial Court, the judgment and order passed by the Appellate Court as well as the record and proceedings of the case. As far as non-using of the suit premises by the petitioners/defendants-tenants is concerned, it was the case of the respondents/plaintiffs - landlords that since last more than six months immediately preceding the filing of the suit, the defendants - tenants had stopped using the suit premises and had shifted to another residential premises, known as "Deepali Apartment" in Nirnaynagar area. With regard to the said aspect, if the deposition of defendants - tenants is perused, it appears that, he had admitted in his cross-examination that after shifting to Deepali Apartment, he again shifted to another residential premises, known as "Rameshwar Apartment" and since 1993 he has been residing in the said "Rameshwar Apartment and prior to that i.e. from 1988 to 1993 he was residing in "Deepali Apartment". He had also deposed that he was not residing in the suit premises, but, he was visiting the suit premises only for cleaning purposes.

4. In view of the admission of the defendants - tenants in his deposition at Exhibit-31 before the Trial Court, I am of the considered opinion that, the Trial Court as well as the Appellate Bench, did not commit any error in coming to the conclusion that the suit premises is not at all used by the defendants - tenants without any reasonable cause for more than six months immediately preceding the filing of the suit as well as on the ground that the defendants - tenants had acquired a suitable alternate accommodation for residential purpose and, therefore, the findings of facts recorded by the courts below are not required any interference by this Court while exercising the powers u/s 29(2) of the Rent Act.

5. As far as the next contention raised by Mr. Limbachia, learned Advocate for the petitioners/defendants-tenants with regard to non-joinder of parties is concerned, the Trial Court has framed Issue No. 7 with regard to this contention raised by plaintiffs and came to the conclusion after appreciating the evidence on record that, at the time of death of his father, except, the petitioner and his family, no other relatives were residing in the suit premises and, therefore, the suit was not barred by non-joinder of parties. The learned Trial Court has rightly observed while dealing with the said issue that the defendants failed to elaborate the issue of non-joinder of parties by giving details about the other family members in the written statement that those members, who were residing in the suit premises at the time of death of the original tenant.

5.1 As per the provisions of Section- 5(11)(c)(i) of the Rent Act, a person can be treated as tenant, if, a person is residing with the tenant at the time of, or within three months immediately preceding, the death of the tenant. If the deposition of the tenant is perused, he had admitted in his cross-examination that his brothers are the citizens of Canada as well as his mother is also a citizen of Canada. He has further admitted that after the death of his father, since 1985 his mother was residing at Canada with his two brothers and one sister and had visited India only on two occasions. He has also admitted that his other two

sisters are married and residing at Mumbai and Talod respectively. He has admitted that in the family of his father, he is the only person, who is residing at Ahmedabad in a flat at "Rameshwar Apartment".

6. Considering this admission on the part of the petitioners/defendants-tenants, in my considered opinion, as per the provisions of Section- 5(11)(c)(i) of the Rent Act, other family members of the original tenant, cannot be treated as tenants.

7. In view of the aforesaid facts and circumstances of the case and in view of the concurrent findings of facts recorded by the courts below, in my opinion, the courts below have not committed any error in deciding the issue in favour of the respondents/plaintiffs-landlords and the suit was not barred by non-joinder of parties.

8. In the result, the present Revision Application has no merit and deserves to be dismissed and is dismissed accordingly. Rule is discharged. There shall be no order as to costs. Interim relief granted earlier shall stand vacated. Registry is directed to send the Record and Proceedings of the present case to the concerned courts below forthwith.