

(1998) 07 GUJ CK 0068
In the Gujarat High Court

Harshadbhai Gordhanbhai Amin

APPELLANT

Vs

Vanmalidas Parmananddas Patel

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1),
13(1)(a), 13(1)(k), 29(2)
Transfer of Property Act, 1882 — Section 108, 108(o)

Citation : (1998) 3 GLR 2427

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Judgement

D.C. Srivastava, J.—This is tenant's revision u/s 29(2) of the Bombay Rent Act, 1947.

2. Brief facts giving rise to this revision are as under:

The landlord-respondent filed a suit for eviction of revisionist and for recovery of arrears of rent and mesne profits on ground of illegal sub-letting, causing, nuisance in the suit premises and further causing annoyance to the neighbouring occupiers, for change of user and breach of terms of tenancy.

3. The suit was contested by the defendant-tenant denying all these allegations and also disputing and challenging validity of the notice and further raising dispute regarding standard rent.

4. The trial Court found that the landlord-respondent failed to establish either of the three grounds for eviction of the tenant. Accordingly, the suit for eviction was dismissed, but decree for arrears of rent was passed.

5. An appeal was preferred by the landlord which was allowed. The appellate Court granted decree for eviction of the tenant-revisionist on the ground of change of user of the suit premises. Hence, this revision has been filed by the tenant.

6. The landlord has not filed any revision or cross-objections, hence the findings of the two Courts below on sub-letting and nuisance need not be disturbed. Findings on these two points recorded by the two Courts below are against the respondent-landlord.

7. The only short point for consideration in this revision is whether the decree of the appellate Court for eviction of the revisionist on the ground of change of user can be sustained.

8. The trial Court on the basis of Division Bench announcement of This Court in the case of Bhabhutmal Rikhbaji Sharma v. Manubhai Madhavji Patel and Ors. reported in 1980 (11) GLR 242 came to the conclusion that since there was no rent note executed between the parties and further because the shop in question was taken on rent for running business mere change of business does not amount to change of user. It was the case that initially grocery and general merchandise business was being run by the tenant-in-chief-defendant No. 1. Subsequently, a new business of repairs of scooter and auto-vehicles was done in partnership with defendant No. 2.

9. The question for consideration is whether change of business from grocery and general merchandise to a scooter repair shop amounts to change of user within the meaning of Section 13(1)(a) of the Bombay Rent Act or it amounts to breach of conditions of the tenancy within the meaning of Section 12(1) of the Act or it amounts to non-user for a period of six months within the meaning of Section 13(1)(k) of the Act.

10. On the facts and circumstances of the case Section 13(1)(k) of the Act is not applicable. Section 13(1)(k) provides that landlord shall be entitled to recover possession of any premises if the Court is satisfied that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

11. It is in evidence that at no point of time the shop was closed for good. On the other hand business was continuously carried on in the shop. Initially it was grocery business and then it was changed to a scooter repairing shops. The question whether such change of user amounts to breach of terms of tenancy within the meaning of Section 12(1) of the Act will be dealt with in the following portions of the judgment. Likewise whether such user amounts to change of user within the meaning of Section 13(1)(a) will also be dealt with in the subsequent portion of the judgment, but by no stretch of imagination it can be said that Section 13(1)(k) is attracted for granting a decree for possession. There was no evidence that for a continuous period of six months immediately precedings the date of the suit the shop was not used for business purpose. As such Section 13(1)(k) is not applicable.

12. Coming to Section 13(1)(a) of the Act it provides that a landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has committed any act contrary to the provision of Sub-section (o) of

Section 108 of the Transfer of Property Act. Section 108(o) of the Transfer of Property Act inter alia says that the lessee must not use or permit another to use the property for a purpose other than that for which it was leased.

13. Section 13(1)(a) of the Bombay Rent Act read with Section 108(o) of the Transfer of Property Act were under consideration before the Apex Court in Dashrath Baburao Sangale and others Vs. Kashimath Bhaskar Data, . In this case also the facts were almost similar. Here the premises was let out for sugarcane crushing with the help of Ox and for running shop thereon and for construction of temporary shed or tin shed at tenant's cost. The tin shed was placed by the tenant at his cost, but subsequently he started using the premises for selling readymade clothes. The case of the tenant was that sugarcane juice business was a seasonal business and business of sale in readymade clothes does not amount to contravention of Section 108(o) of the Transfer of Property Act and as such decree for eviction cannot be passed. The trial Judge directed the tenant's eviction. The tenant preferred appeal which was also dismissed. The writ petition was filed in the High Court which was also dismissed. The Apex Court also observed that we see no reason to disturb the finding of the Courts below under the Act. The appeal of the tenant was, therefore, dismissed.

It is thus clear from this verdict of the Apex Court that such change of user is a ground for tenant's eviction. In the case under consideration before me also the facts are identical. Instead of running a grocery business, scooter repair was undertaken in the shop and on the strength of the Apex Court's verdict the decree of the lower appellate Court directing eviction of the tenant cannot be disturbed. It is in accordance with Section 13(1)(a) of the Act.

14. The decision of the Division Bench in the case of Bhabhutmal Rikhbaji v. Manubhai Madhavji reported in 1980 (11) GLR 242 (supra) which was relied upon by the trial Court and also by the Learned Counsel for the revisionist with respect, cannot be followed when the view of the Apex Court in Dashrath Baburao Sangale and others Vs. Kashimath Bhaskar Data, is to the contrary.

15. The judgment and decree of the trial Court is also in accordance with Section 12(1) of the Act. No doubt in this case no rent note was executed between the parties, but the tenant raised a dispute regarding standard rent and moved an application for fixation of standard rent vide S.R.A. No. 2599 of 1974. The standard rent was fixed by the Court. The tenant contended that the standard rent was got fixed by fraud. However, in the application for fixation of a standard rent the tenant mentioned certain conditions of the tenancy. One of the conditions of tenancy mentioned in this application was as under:

Condition No. 2: that he has to do the business of grocery and provision store in the suit premises and except that he has not to do any other business in it.

This is clear admission of the tenant that he will not use the premises for any other business except for doing business of grocery and provision store. Admission is the best type of evidence. Simply because no rent note was

executed it cannot be said that terms of tenancy were not settled. In the plaint also the landlord alleged similar terms. The said allegation in the plaint finds implicit admission as well as express admission of the tenant in his own application for fixation of standard rent. The previous admission of the tenant is binding upon him in subsequent suit and such admission unless explained to be erroneous or mistaken is liable to be used against the tenant. The tenant has not offered any explanation that the admission of condition No. 2 in the application for fixation of standard rent was erroneous nor this admission was explained otherwise. Consequently, this admission of the tenant in his application for fixation of standard rent was rightly considered by the lower appellate Court to be one of the terms of tenancy. If this was the express term of tenancy then the tenant was not entitled to use the shop for running any business other than the grocery and provision store. If he did so it amounts to failure of the tenant to observe and perform other conditions of the tenancy insofar as they are consistent with the provision of the Act. This decree for eviction could be passed by the lower appellate Court u/s 12(1) of the Bombay Rent Act.

16. The Learned Counsel for the revisionist contended that in Para 3 of the written statement the terms and conditions of tenancy are said to be that the shop was to be used for business. However, business is a wider term which was restricted in its meaning by the tenant himself in his application for fixation of standard rent. Consequently, it cannot be said that the decree for eviction passed by the lower appellate Court is contrary to law.

17. In the result I do not find any merit in this revision which is liable to be dismissed. The revision is accordingly dismissed. Parties shall bear their own costs.