
(2002) 01 SC CK 0071
In the Supreme Court Of India
Case No : Civil Appeal 2333 of 2001

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APPELLANT

Vs

V.S. Venkataraman and Another

RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 10(3), 25

Citation : (2003) 1 ALT 23 : (2002) 2 JT 124 : (2003) 1 RLW 70

Hon'ble Judges : R. C. Lahoti, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : MADHAV MITRA, N. C. CHAUDHARY, RAKESH KUMAR, VIJAY CHAUDHARY

Final Decision : Allowed

Judgement

1. The suit premises are situated in Madras and are admittedly governed by the provisions of the Tamil Nadu Buildings (Lease and Rent Control Act), 1960 (hereinafter referred to as 'the Act', for short). The landlord - respondents initiated proceedings for eviction of the tenant -appellant on the grounds available under Sections 10(2)(ii)(a) and (b), and 10(3)(c) of the Act alleging that the tenant had sub-let the tenancy premises although the lease did not confer on the tenant any right to do so, that the tenant had used the building for the purpose other than that for which it was leased and that the landlords, occupying only a part of the building, required additional accommodation for their activities. The rent controller and the appellate authority negatived all the three grounds and therefore, directed the eviction petition to be dismissed. The landlords preferred a revision u/s 25 of the Act to the High Court which has been allowed and holding the availability of grounds of eviction on all the three counts, the High Court has directed the tenant to be evicted.

2. It appears that the building, at one time, was owned by professor T.M.P. Mahadevan. He created a trust and appointed the landlord - respondents as

trustees. The ownership of the building vests in the trust. The tenant-appellant is a disciple of late Prof. Mahadevan. The first floor of the premises is in occupation of the trust and its trustees, while the ground floor is held by the tenant on lease from the trust. It appears that the tenant is a foreigner and for a major part of the year keeps travelling outside the country and stays in India only for a few months in a year. According to the trustee-landlords, the tenant has sublet the premises and although the premises were let out for the residence of herself, she has permitted them to be used by persons other than herself and therefore, there is a change of user of the premises. It was also alleged that trustees were performing pooja and ceremonies according to the tenets of late Prof. Mahadevan and arranging discourses in the hall situated on the first floor but lacking at the number of participants and visitors, the hall on first floor was proving to be inadequate accommodation and therefore, the ground floor, in occupation of the tenant-appellant, was needed by the landlords.

3. According to the tenant, the tenant has a watchman, a caretaker, a driver and a representative in her employment, who stay in the premises with herself and while she goes out of the country, the premises are left under the care of her employees who stay there only to take care of the premises. Neither the possession of the premises has been parted with by the tenant nor such employees are in occupation of the premises on their own. The premises continue to be used for the purpose of residence of the tenant and therefore, there is no change of user. As to the need for additional accommodation as pleaded by the landlord-respondents, the same was denied.

4. The learned rent controller found that there was no sub-letting as there was no parting with the possession by the tenant. Merely because the employees of the tenant, who were staying with her, were allowed to look after the tenancy premises in her absence when she left India and went to foreign countries, that could not amount to sub-letting and there was no change of user as the premises continued to be used for the residence of the tenant. As to the need of the landlords for additional premises, the learned rent controller found that the first four premises, known as Shankara hall, were about 900 sq. ft. in area. There were steel benches and on the admission of the landlords themselves, 200 persons could easily sit there. Excepting the statement of one of the landlords, no other evidence was adduced to show that the premises in occupation of the landlords were, in any manner, inadequate to satisfy their requirement or there was such an increase in their activities as could not be accommodated in the space already available with them. In the opinion of the rent controller, as there was absolutely nothing to show how the space in occupation of the landlords was insufficient, no case for eviction was made out. All these findings were upheld by the appellate authority. In the revision preferred by the landlords, the High Court entered into reappraisal of the evidence. We cannot resist observing that the manner, in which the High Court has dealt with the case and interfered with the concurrent findings of the two authorities below, is very casual and cursory. The High Court did not doubt that the tenant was having employees and they were

assisting her but then the High Court proceeded to observe that it could not be understood how in the absence of the master i.e., the tenant having left the country, only the servants occupying the place could be construed as the master occupying the premises and therefore, it could not be inferred that the premises were not in the direct use of the tenant but in the indirect use by somebody else and therefore, a case of sub-letting in favour of third parties was made out. The High Court proceeded to hold that the burden was on the tenant to prove that the tenant was strictly making use of the premises for the purpose for which the premises has been let out and as the premises were let out for the purpose of residence of the tenant but she had permitted the same to be used by third persons during her absence from India, it was a case of change of user. Suffice it to observe that on both the counts the approach adopted by the High Court is perverse and no such finding could have been arrived at, more so in reversal of the concurrent findings recorded by the rent controller and the appellate authority. So is the case on the third ground for eviction, i.e., the landlords' need for additional accommodation. The High Court has hardly adverted to the question, whether on the available material, a case of need for additional accommodation was made out and, rather, jumped to deal with the question of comparative hardship and proceeded to record a finding that inasmuch as the tenant was mostly away from the country, she may not suffer any hardship if she is directed to vacate the premises and even if there is some hardship, the hardship of the landlords would outweigh hers. Without discussing any evidence or material on record, the High Court proceeded to observe that the first floor premises were not adequate for all the activities of the trust and hence, the trustees required the premises in the occupation of the tenant as additional accommodation. Such an approach adopted by the High Court cannot be sustained.

5. While exercising the revisional jurisdiction u/s 25 of the Act, the High Court may call for and examine the record of the appellate authority and satisfy itself as to the regularity of such proceedings or the correctness, legality and propriety of any decision or order passed therein. It has been the consistent view of this Court that the power of revision conferred on the High Court is not so limited in its scope as it is u/s 115 CPC, but it is also not as wide as the power of an appellate court. Having carefully gone through the pleadings and evidence available on record, and having scrutinised the orders of rent controller and the appellate authority as also of the High Court, we are of the opinion that the High Court has clearly exceeded its revisional jurisdiction in interfering with the orders of the authorities below. The approach adopted by the High Court in dealing with the case, cannot be countenanced and its order is wholly unsustainable in law.

6. The appeal is, therefore, allowed. The judgment of the High Court is set aside and that of the rent controller, as maintained by the appellate authority, is restored. As a consequence, the eviction petition filed by the landlord-respondents is directed to be dismissed. However, we make no orders as to costs.