
(1996) 10 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 495 of 1990

Ishwardas and Brothers

APPELLANT

Vs

Additional District Magistrate and Others

RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Partnership Act, 1932 — Section 14, 15

Citation : (1997) 99 BOMLR 91 : (1997) 3 MhLj 552

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—In this petition, the tenants challenge the order passed by the reviewing authority as also the appellate authority granting permission to issue a quit notice.

2. Initially, the Rent Controller had rejected the application made on behalf of respondent No. 2/landlady under the provisions of Clause 13(3)(i)(iii)(vi) and (vii) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 (hereinafter called "the Rent Control Order" for the sake of brevity). In the appeal, the appellate Court granted the permission under Clause 13(3)(i) and (iii) of the Rent Control Order, holding that the tenant had fallen in arrears of rent of more than three months and had sublet the premises. Two review applications came to be filed against this order - one by the landlady and another by the tenants. The tenants' review application was rejected, while the review application by the landlady was allowed and the finding of the appellate authority was confirmed and in addition to that the reviewing authority also granted permission under Clause 13(3)(ii) on the ground that the tenants had become habitual defaulters and under Clause 13(3)(viii) on the ground that the tenants had committed an act of waste thereby materially impairing the utility and/or value of the property in dispute.

3. It must be said at the outset that the order passed by the reviewing authority in respect of the permission under Clause 13(3)(ii), on the ground that the tenants had become habitual defaulters, is not correct, at all, for the simple reason that that was not the case pleaded by the landlady in her application. That finding of the reviewing authority will have to be set aside and is set aside.

4. Insofar as the permission under Clause 13(3)(i) of the Rent Control Order is concerned, Shri Daga, learned Counsel for the petitioners, has submitted that the entire rent has now been paid and, therefore, there is no question of grant of permission under that clause. There is no denial of this assertion, as in spite of the notice, the landlady has not chosen to appear before this Court. The submission of Shri Daga, therefore, will have to be accepted and thus the finding regarding the grant of permission under Clause 13(3)(i) would also have to be set aside and is hereby set aside.

5. That leaves the question only regarding the two other items, viz., (iii) and (viii) of Clause 13(3) of the Rent Control Order. The following factual background should be able to throw some light on the controversy.

6. The house belonged to one Sonabai. It was given on lease in the year 1965 in favour of M/s Ishwardas & Brothers. It seems that M/s Ishwardas & Brothers had two partners the none being Dharamrai Tuljaram Balani and the other being Ishwardas Tuljaram Balani. The said tenancy agreement describes only Dharamrai Tuljaram Balani, partner of M/s Ishwardas & Brothers, Central Avenue Road, Gandhibagh, Nagpur as the lessee. However, it is a common case and well - understood by the parties that this tenancy was in favour of a partnership firm M/s Ishwardas & Brothers. It seems that Dharamrai, the partner, with whom there was a tenancy agreement, left the premises, but the said firm was continued by inducting the third brother Atalram as a partner somewhere in the year 1970 (which would be clear from the evidence). There was no notice given of Atalram's entry into the partnership nor was any consent sought from the landlady in that behalf and the said firm continued to be the tenant upto the year 1982 and the landlady also accepted the rent only on behalf of the firm Ishwardas & Brothers. In the year 1982, however, it seems that the firm Ishwardas & Brothers was dissolved and two separate firms came into existence, namely, Ishwardas & Sons and Atalram Tuljaram Balani, and they agreed among themselves to share the shop separately. The shop had six Tasmans. Four Tasmans were retained by M/s Ishwardas & Sons and two were given to Atalram Tuljaram Balani. A partition was created. Not only this but the two firms seem to have agreed amongst themselves to share the rent also. The rent originally was Rs. 700/- per month. Out of that Rs. 400/- were to be paid by firm Ishwardas & Sons and Rs. 300/- were to be paid by Atalram Tuljaram Balani. They accordingly sent intimation to that effect to the landlady but the landlady simply refused to accept the rent separately and proceeded to file an application for permission to terminate the tenancy. She initially had file the application only under Clause 13(3)(iii), (vi) and (viii) of the Rent Control Order. Subsequently, she added

Clause 13(3)(i) also. In her application, she pointed out the above facts and claimed that without her permission the shop was divided and the exclusive possession was granted by the partnership firm Ishwardas & Brothers in favour of Atalram Tuljaram Balani, which amounted to creation of sub-tenancy and also amounted to impairing the value and the utility of the tenanted property. She also pointed out in her application that her tenant Ishwardas & Brothers and its partners were to make the payment of the rent, but the rent was offered separately by M/s Ishwardas & Sons and Atalram Tuljaram Balani in respect of the areas in their separate occupation and, therefore, she had not accepted the rent from the third parties and had returned the drafts. She pointed out that the rent was not paid by her tenants M/s Ishwardas & Brothers from October, 1982 and, therefore, the said rent was liable to be deposited or the permission under Clause 13(3)(i) of the Rent Control Order was liable to be granted. Initially in the application only the tenant M/s Ishwardas & Brothers was joined through its partners, namely, Ishwardas and Atalram. However, by amendment, the partners came to be joined separately in their personal capacities. It is now reported that original tenant Ishwardas has now expired and his legal representatives have been brought on record.

7. In their common written-statement, the tenants contended that M/s Ishwardas & Brothers was not a legal entity and, in fact, it was a composite name for non-applicant Nos. 2 and 3, namely, Ishwardas and Atalram. The rent at the rate of Rs. 700/- was admitted, but it was tried to suggest that Rs 400/- were payable by Ishwardas and Rs. 300/- were payable by Atalram. They denied the factum of partition and contended that it was a mutual agreement between the two brothers for the use of the tenement. They also denied that the value and utility of the tenement was impaired in any manner. They further pointed out that there was no question of sub-letting as the two brothers were continuing the business in the same tenement in separate positions in two different names and while Ishwardas agreed to contribute Rs. 400/-, Atalram agreed to contribute Rs. 300/- towards the total rent of Rs. 700/-. They also denied the claim under Clause 13(3)(i) of the Rent Control Order.

8. On these pleadings, the evidence was led. Husband of the landlady entered the witness-box. One doctor was also examined in support of the plea, but his evidence was not relevant. The husband, in his evidence, proved the original tenancy agreement dated 17.4.1965 and pointed out that the tenant had no right to effect partition or to transfer the same. He also pointed out that letters were sent to his wife by Atalram Balani offering the separate rent and demanding a separate agreement in his favour alone. Similarly, such letters were received by his wife from Ishwardas Balani also. He pointed out that the drafts, which were separately sent to the landlady by the two brothers were sent back as she did not approve of the so called partition and also did not want to create tenancy separately in favour of the two brothers; she had although treated only the partnership firm, viz., Ishwardas & Brothers, as the tenant. It was reiterated that Ishwardas & Sons and Atalram Tuljaram Balani were not the tenants of Sonabai.

He also complained that the partition was a pucca partition by constructing a wall in bricks and, therefore, the value and the utility of the shop was impaired. Nothing significant in his cross-examination has been brought out. The only significant thing appears to be that he had not entered the shop after 1.8.1982. Though he reiterated that the partition effected by the non-applicants could be seen from outside and for that purpose it was not necessary to go into the shop at all. He specifically denied the suggestion that the partition was effected by keeping furniture. He denied that he had realised the draft of the amount of Rs. 3600/- which was in the name of Ishwardas & Sons on account of rent and also draft of Rs. 1200/- sent by Atalram Balani. He was cross-examined also at the instance of Atalram separately, where it was tried to be unsuccessfully canvassed that Atalram's drafts were accepted. He admitted in his cross-examination that the two brothers are the partners of the non-applicant/Firm and there were in all six Tasmans in occupation of both the brothers.

9. On behalf of the tenants, one Atalram entered the witness box and reiterated his case. In his cross examination, it has come out that he became partner somewhere in the year 1971, that he had not brought the partnership-deed to the Court and that prior to 1971, there were two other partners, and after one partner left, he became a partner. He has asserted in his examination in chief that he had not made any alterations or additions in the shop. He claimed that he had not even erected any partition and there was an old partition which was already in existence. It is also an admitted position that when Atalram was introduced as a partner, there was no notice sent to the landlady

10. On this backdrop, as has been pointed out, the matters stood decided by the reviewing authority.

11. Shri V.C. Daga, learned Counsel appearing on behalf of the petitioners/tenants, very vehemently canvassed that the reviewing authority was wholly in error in firstly holding that there was a subletting. He had the same comment to offer about the finding given by the appellant authority. He contended that once it was accepted that the partnership firm, namely, M/s Ishwardas & Brothers, was the tenant, it means that its both the partners were also the tenants and held the same rights. He canvassed further that these two brothers if they had continued to occupy the whole shop though separately, it could not be said that a sub-tenancy was created by one of them in favour of the other. In short, Shri Daga submits that there has been no parting possession by the tenant in favour of a sub-tenant. As regards finding on Clause 13(3)(viii) of the Rent Control Order, the learned Counsel argued that the authorities below had concurrently rejected the contention of the landlady that the utility or value of the tenanted premises was materially impaired by the act of the tenants. The reviewing authority, for the first time, could not have set aside the concurrent findings of fact and could not have reached its own conclusion. He pointed out that the finding in that behalf was extremely sketchy.

12. The reviewing authority has basically proceeded on the ground that though

the partnership firm M/s Ishwardas & Brothers was the tenant, it could not be said that Atalram was also having a status of the tenant, though he was a partner thereof. Both the appellate as well as the reviewing authorities have noted, and in my opinion rightly, that the original tenancy agreement was with Ishwardas & Brothers where there were only two partners, namely, Dharamrai and Ishwardas. It was an admitted case that Dharamrai had quit the partnership. It is also an admitted case that it was only in the year 1970 that Atalram was introduced for the first time as a partner in this very partnership firm. The authorities below also took a notice of the fact that when Atalram was introduced, no notice was given to the landlady nor was her consent sought for induction of Atalram as a partner. Both the Courts, therefore, held that Atalram, therefore, could not get the status of a partner. It is now a settled law that a partnership is not a legal entity and it is only a compendious name representing the partners thereof. Therefore, it is quite clear that initially though the partnership was created in favour of M/s Ishwardas & Brothers, in reality its partners, namely, Dharamrai and Ishwardas were the only tenants and they alone could be described as the tenants. Question is as to whether Atalram who came in as a partner of this firm would also get the status, merely because the landlady kept on accepting the rent from the firm. The answer will have to be essentially in the negative. It would be perfectly justifiable for Ishwardas to introduce a new partner and on that count, it cannot be held that merely because he had introduced a new partner and allowed the user of the place to an outsider to the earlier partnership firm, like Atalram, he has parted with the possession. The law has been completely settled by the Supreme Court in *Madras Bangalore Transport Company (West). v. Inder Singh* AIR 1986 SC 1565. In this case, relying on the three-earlier cases reported in *Murlidhar v. Chuni Lal* 1970 Ren CJ 922, *Muhammad Alikhan Sahib Vs. S.K. Venkataramanayyar and Another*, and *Vishwa Nath and Another Vs. Chaman Lal Khanna and Another*, , the apex Court came to the conclusion that a partnership firm is not a legal entity and the firm name is only compendious way of describing the partners of the firm. Therefore, occupation by a firm is the occupation by its partners. The apex Court further went on to hold that even if a stranger was introduced as a partner of the new firm where it is shown that the partner of the erstwhile firm which was the tenant had continued to occupy the premises such entry will not give rise to the inference of sub-tenancy. In essence, the common thread in all these judgments as found by the Supreme Court is that the original partner must be there and continue to be in occupation of the rented premises. Once that position is established, an entry of an outsider into the partnership would not amount to a sub-tenancy. In fact, Shri Daga wanted to rely on this case. However, the apex Court in this case nowhere suggests that such an outsider gets the "status" of a tenant because of his introduction as a partner and, indeed, that cannot be a case. In para 8 of this judgment, the Supreme Court held as under:

The Madras-Bangalore Transport Company (West) continued to be in occupation of the premises even after the Caravan Goods Carrier Private Limited came in.

They never effaced themselves. The firm allowed Caravan Goods Carrier Private Limited Company, to function from the same premises but Caravan Goods Carrier Private Limited though a separate legal entity, was in fact a creature of the partners of Madras Bangalore Transport Company (West) and was the very image of the firm. The Limited Company and the partnership firm were two only in name but one for practical purposes. There was substantial identity between the limited company and the partnership firm. We do not think that there was any sub-letting, w.f. assignment or parting with possession of the premises by Madras-Bangalore Transport Company (West) to Caravan Goods Carrier Private Limited so as to attract Section 14(1)(b) of the Delhi Rent Control Act.

These observations would go to show that what is in essence is the continuation of the original tenants.

13. Now, applying this example to the present case, Atalram was never there when the tenancy was created. He came into the partnership firm only by way of his entry in the year 1971. In law, therefore, it was only Ishwardas himself who continued to be the tenant, though Atalram's entry into the partnership firm did not change the nature and did not mean parting of the possession on the part of Ishwardas. It also did not confer any status of tenancy of Atalram himself for the simple reason that this entry was not with the knowledge and/or consent of the landlady. Once this partnership was broken and two separate premises were created by Ishwardas and Atalram and a separate exclusive user was contemplated for Atalram of a part of the shop, it was clear that the original tenant Ishwardas had parted with the possession and had allowed the user of that separated part of the premises to Atalram. This would be nothing but an example of clear sub-tenancy. Again, the original rent of the whole premises was Rs. 700/-. In the new arrangement, Ishwardas was to pay Rs. 400/- only, while Rs. 300/- were to be paid by Atalram. Thus, Ishwardas had reduced his liability to pay rent of Rs. 700/- per month. This was definitely, therefore, a consideration for sub-tenancy.

Shri Daga then invited my attention to Raunak Ram Vs. Pishori Singh, . In fact, in this case, there is a clear-cut finding that the tenancy was created in favour of a firm and though one Maheshkumar who had acted as an agent of the firm, entered into contract and had quit from the premises. The other partners of the firm had continued to be in occupation. It was in those circumstances that the Supreme Court held that there was no sub-letting. The ratio by the Supreme Court in this case is no different from the earlier case cited supra. This case is, therefore of no use to Shri Daga.

14. Shri Daga then argued that as a partner Atalram had some rights and as such the tenancy rights being the assets of the partnership, Atalram would be entitled to share the possession. He relied on M/s. Shivraj Fine Art Litho Works and others Vs. Purushottam and others, and contended that when a partner brings in his personal asset into the partnership firm also contribution to capital, the asset becomes the asset of the firm and the partner loses his exclusive right

over that asset and he has to share it along with other partners. Relying on these principles, Shri Daga submitted that when Ishwardas had thrown his tenancy into the partnership firm, he could not alone assert his rights and he had to share it with Atalram also. This was a case purely under the Indian Partnership Act under Sections 14 and 15. What the rights of the partners inter se would be, would certainly be governed by those sections. However, these rights cannot be used against a landlady since the matter is governed exclusively by the Rent Control Order. There may be the inter se rights in between Atalram and Ishwardas; however, insofar w.f the landlady is concerned, there would be no such rights. The reported decision is, therefore, of no consequence.

15. Shri Daga then relied upon *The Municipal Corporation of Greater Bombay v. Lala Pancham* AIR 1956 SC 1008 : 67 Bom. L.R. 782, where the Supreme Court has held the tenancy rights as a property and has held that the tenant is an interested person. There is no doubt about the proposition laid down. However, this case does not take the cause of the petitioner any further, for the simple reason that it is not concerning the Rent Control Order or any principle involved therein.

16. The further reliance of Shri Daga is on the case reported in *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, . This is also a case under the Partnership Act where the interest of the partner in the partnership property has been held to be a property. Shri Daga invited my attention to the principles on the basis of which there should be a distribution of the partnership's assets. There cannot be any doubt about these principles. However, in the reported decision, those principles are only vis-a-vis the provisions of the Partnership Act. The law laid down is, therefore, wholly inapplicable to the present facts.

17. Shri Daga then submitted that, in fact, there was no transfer by Ishwardas of the premises in favour of Atalram. It was only a distribution of assets in between them. If there was no transfer, then there could be no sub-tenancy. For the purpose that the inter se distribution of assets after the dissolution of partnership firm does not amount to transfer, Shri Daga relied on *Dipak Banerjee Vs. Lilabati Chakraborty*, . This was a case under the West Bengal Premises Tenancy Act, 1956. Shri Daga relied upon the following observations:

In order to prove tenancy or sub-tenancy two ingredients had to be established, firstly the tenant must have exclusive right of possession or interest in the premises or part of the premises in question and secondly that right must be in lieu of payment of some compensation or rent.

Shri Daga submitted that there is no payment of consideration for parting with the possession on the part of Ishwardas and therefore, merely because Atalram was allowed to occupy a part of the tenanted premises, it could not be said that he was a sub-tenant, though his possession was exclusive and though Ishwardas had parted with the possession. The submission is clearly incorrect on the facts

of the case. It is also clear from the evidence that after parting with the premises Ishwardas restricted his liability to pay the rent to Rs. 400/- only in comparison to the original rent of Rs. 700/-. This sharing of the liability would itself be a consideration and, therefore, there would be no question of any doubt regarding the sub-tenancy of Atalram. Again, the observations in para 7 in the reported case clearly bring out that in that case there was no exclusive occupation of the alleged sub-tenant. Here, the case is entirely different. Here, both the brothers have asserted their rights to enter into separate agreements with the landlady, thus claiming exclusively of their possession. The case, therefore, is of no consequence.

18. Shri Daga similarly relied on *Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala*, where the distribution of partnership assets, after the dissolution, has been held to be a no transfer, for the reasons aforementioned. This case would also be of no consequence.

19. Lastly, Shri Daga relied for the same principles on *Ganpat Rai v. Abnash Chander* AIR 1973 J&K 74. Here also the case turns completely on the provisions of the Partnership Act and there is no consideration of Rent Legislation which is involved in the present case.

20. It will, therefore, have to be held that the finding of the appellate Court as also the reviewing authority, that the landlady had proved the sub-tenancy and Atalram was, in fact, a sub-tenant of the original firm M/s Ishwardas & Brothers is correct and will have to be confirmed.

21. Shri Daga then contended that the finding of the reviewing authority of the question of Clause 13(3)(vii) of the Rent Control Order is obviously incorrect as the reviewing had, without realising that the earlier two authorities had concurrently held against authority the landlady, upset those findings. I have seen the finding. The reviewing authority has, indeed, not discussed any evidence as regards that finding. The two authorities have already held that the tenant had not, in any manner, made any construction and had not as such done any act of waste so as to impair the utility or value of the premises. It is also pointed out by Shri Daga that the evidence on this count is completely wanting and the landlady has not shown in what manner the utility or the value of the property concerned would be impaired. It must: be said that the reviewing authority has written an extremely sketchy and skeleton like finding, without considering the matter properly. In wake of the finding of fact by the two authorities below there was no reason for the reviewing authority to upset the said concurrent finding, particularly when there was no evidence to the contrary. In that view of the matter, that finding will have to be set aside.

22. In the result, the only finding on the question of Clause 13(3)(iii) of the Rent Control Order is confirmed and the permission is granted to issue a quit notice on that count. In view of the findings which have resulted into a permission being granted, the petition is dismissed with costs.