

(1965) 08 BOM CK 0014

In the Bombay High Court

Case No : Civil Revision Application No. 1477 of 1964

Jam Manufacturing Co. Ltd.

APPELLANT

Vs

Sadashiv Sitaram

RESPONDENT

Date of Decision : 20-08-1965

Acts Referred:

Citation : AIR 1967 Bom 43 : (1966) 68 BOMLR 152 : (1966) ILR (Bom) 716

Hon'ble Judges : Patel, J; Bal, J

Bench : Division Bench

Advocate : N.D. Vakharia and R.H. Vakharia, for the Appellant; R.L. Mulchandani, for the Respondent

Judgement

Patel, J.—This revisional application arises out of an ejectment proceeding taken by the plaintiff-petitioners against their tenant, one Janabai Bapuji. The plaintiff gave a notice to the tenant terminating her tenancy on the ground that she was in arrears of rent from July to December 1959. The notice was given on 28th January 1960. Thereafter, the petitioners filed the suit on 20th of June 1960 in the Small Cause Court at Bombay under the Rent Restriction Act. The tenant contested the proceeding. She contended that she was a tenant for about 20 years. She admitted the notice but said that after the receipt of the notice she offered part of the rent to the plaintiff as she was out of work but the plaintiff refused to accept the same and demanded all the arrears. She stated that she should be allowed to pay the rent by instalments. During the pendency of the suit, she died. The opponent was brought on record. He claimed to be the son of the deceased and also claimed that he was living in the premises and as such entitled to be a tenant. He further contended that even if the right to evict the tenant had accrued to the plaintiff, he could not be evicted in law though there were arrears of rent as prescribed by the Act, on the ground that he acquired an independent tenancy under the Act. The learned Judge accepted these contentions and dismissed the suit. Equally, the appeal of the plaintiff failed before a Bench of Judges. The plaintiff seeks to revise these orders as being

untenable.

(2) The right to continue as a tenant can be claimed by the opponent only u/s 5(11)(C). Except this definition section, which defines the Word "tenant", there is no other provision in the Act which enables a person residing with the tenant at the time of his death as a member of his family, to claim the rights of a tenant. to determine what the right of such a claimant is, one has to consider the provisions of the Act.

(3) A tenant who continues in the property after termination of his tenancy has been consistently described as a "statutory tenant" because he is really not a tenant as the landlord does not want him and yet he enjoys most of the privileges of a tenant by reason of the statute Mr. Mulchandani very strongly relies on the decision in Keevas v. Dean; Nunn v. Pellagrini (1924) 1 KB 685 , Balmukund and Co. Vs. Mangaldas Tribhovandas, , and Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, , where it is held that the statutory tenant has only a personal right which cannot be inherited or assigned. He contends that this being so, it is impossible to say that the successor to the statutory tenancy u/s 5(11)(C), whom we may conveniently call "Successor" tenant, takes it by inheritance. As the new tenant takes by reason of this provision, his tenancy must be regarded as a new and independent tenancy and he is, therefore, not liable to make good the defaults of the previous tenant. This contention overlooks the fact that the statute does not by any express provision confer any such independent right upon the "new" tenant. Can such a right be inferred from the definition clause only? the "statutory tenant" is the creation of the Rent Acts and the Legislature who created such a tenant was equally entitled to make his right heritable and transmissible if it chose.

(4) Section 15 to some extent permits assignment of the right of a tenant. It is true that in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, , the Supreme Court has held that a statutory tenant's rights are not assignable. But then Section 5(11)(C) applies to both contractual tenants as well as statutory tenants and, therefore, it would not be correct to make the inference of a new tenancy on the foundation of non-transmissibility of statutory tenancy. that Section 5(11)(C) applies also to contractual tenant cannot be disputed, as decided by the House of Lords in Moodie v. Hosegood (1951) 2 All ER 582. The question, therefore, becomes one of the construction of the provisions of our Rent Act. One also cannot forget that the right of a statutory tenant is spoken of as interest in property. Shirpa Rama v. Laxmidas, C. R. A. No. 400 of 1948 dated 16-8-1948 (D. B.) (Bom); Middleton v. Baldock (1950) 1 K. B. 657 .

The scheme of our Act is clear. It does not in positive terms create any right in the tenant. It only imposes some disability on the landlord unlike the English Acts. Section 12(1) of our Act disables a landlord from recovering possession of the premises as long as the tenant is ready and willing to pay rent according to the Act and observes and performs such of the conditions of the tenancy as are consistent with the Act. Sub-section (2) permits him to file a suit for possession

on the ground of non-payment of rent only after a month of his serving a notice of demand. Sub-section (3) is divided into two parts, By clause (a), it requires the Court to pass a decree for possession infavour of the landlord if the tenant is in default of rent for more than six months and has not paid the same for one month after the notice, and if there is no dispute with regard to the standard rent. Clause (b) applies to cases to which clause (a) does not apply. This section, therefore, clearly creates in the landlord a right to obtain possession of the premises if the tenant has not paid the rent as in Section 12(3)(a) as decided in *Kurban Hussen Sajauddin Vs. Ratikant Nilkant and Another*, , and *Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad*, . Similarly, Section 13 gives the landlord the right to recover possession if the conditions of the section are satisfied, for it syas, " a landlord shall be entitled to recover possession of any premises " Is there then sufficient reason to defeat the right of the landlord by adopting such a construction? One of the rules of construction is "In determining the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles, should, in all cases of doubtful significance, be presumed to be the true one" (See Maxwell on Interpretation of Statutes, 9th Edition, p. 198) and

"Whenever the language of the Legislature admits of two constructions and, if construed one way, would lead to obvious injustice, the Courts can act upon the view that such a result could not have been intended, unless the intention had been manifested in express words.", (Ibid p. 207).

(5) It is not possible from the language of the relevant provision to infer that the Legislature intended to dump someone into the premises with new rights. The protection is given to the members of the family of the tenant, because they would have been in most cases entitled to succeed to his interest and would have continued there, had he been a contractual tenant and also to avoid hardship to them. The Legislature, therefore, partly adopted the principle of transmissibility by death intestate of the tenant to such members of his family as were living with him, that is, created partial right by succession. In whost, it put the successors in place of the tenant. If that is correct, then the conclusions is that the successor steps into the shoes of the tenant from the stage where he left off.

(6) To accept the interpretation put upon these provisions by the lower Court, would cause great injustice and inconvenience to the landlord. Take for instance the case where the landlord files a suit after giving notice for recovering possession on the ground that he needs the premises for his personal needs. The proceedings drag on from Court to Court five years and when in the final Court the statutory tenant dies, he would have to start the proceedings again against the "successor tenant", which may again take five years. The very purpose of allowing the landlord to recover the premises for personal needs would be frustrated. Similarly, take the case where recovery of possession is sought on grounds of arrears for more than six months. After five years, his suit is rendered

useless because the statutory tenant dies and there is no obligation on the "successor tenant" to discharge the arrears. A decree against the ordinary heirs (according to ordinary law) is worthless because there is no compulsion to pay. Many more such unjust results can well be imagined.

(7) The lower Courts' interpretation of these provisions is based on the decision of the English Division Court in *Tickner v. Clifton* (1929) 1 KB 207, where the daughter of the deceased "statutory tenant" claimed the protection u/s 12(1)(g) of the Increase of Rent and Mortgage interest (Restriction) Act of 1920 which is somewhat similar to our S. 5(11)(c). the Court held that she was a statutory tenant of the premises and had to observe all the conditions and terms of her father's contractual tenancy, but her tenancy began with her and she was not liable to pay arrears of rent owed by her father at his death, they being a liability incurred by a previous tenant. The English provisions are contained in several Acts enacted from time to time, and the principles underlying them are not all the same as those of our Act. Sections 12 and 13 of our Act differ materially from Section 15 of the English Act of 1920, and it may be that, having regard to its provisions, the conclusion may have been justified.

(8) Even in England, the principle of that case has not been wholly accepted. In *Bolsover Colliery Co. Ltd. v. Abbot* (1946) 1 KB 8, the question arose in a slightly different context. The deceased was in occupation of premises belonging to the appellant company as its employee by reason of his employment. On his death, his son was willing to be employed but he was not employed by the company. He claimed tenancy u/s 12 (1)(g) of the Act of 1920. Scott, L. J., concluding the judgment said (p. 12):

"The right of the landlord and the liability of the tenant are co-extensive in that respect, and a tenancy carried on by the provisions of the Act as to the succession of a widow or other relation is the same tenancy with its advantages and disadvantages unaltered."

Again, in *Americal Economic Laundry Ltd. v. Little* (1950) 2 All. E. R. 1186, a similar question arose in connection with an unconditional order for possession against the "statutory tenant", one Little, the execution of which, however, was suspended from time to time finally up to 3rd April 1950. Little died on 8th March 1950 and his daughter who lived with him as a member of his family claimed protection u/s 12(1)(g) of the Act of 1920. The tenant had merely a right to apply for a postponement of execution of the order u/s 5(2) of the Act. Somervell, L. J., said (p. 1188):

"In my opinion, a tenet in that position, with an absolute order made against him, notwithstanding that it may be suspended, is not a tenant within the meaning of S. 12(1)(g) of the Act of 1920. That, I think, is in accordance with a commonsense application of the section. It would be an illogical result if that section gave protection to a widow which the Court had expressly taken away from the husband whose tenancy she relies on, that tenancy having been

brought to a suspended end by the order for possession."

Jenkins, L. J., agreed with Somervill, L. J., but added (p. 1190):

"It was held by the learned Judge that that provision (Section 12(1)(g)) still remained of full force and effect, that on the death of her father the defendant became the statutory tenant under a new statutory tenancy which was hers and nobody else's and would continue to be enjoyed by her in her own right until such time as some new ground for claiming possession arose and the landlords successfully applied for and obtained an order for possession. That would be a most surprising result, and notwithstanding the reasons to the contrary, stated by the learned Judge, I agree with my Lord that on a consideration of the relevant provisions of the Act there is really no warrant for his conclusion. I agree that the right principle to be followed is the one stated in the Bolsover case (3), which shows that the member of the family who becomes a statutory tenant on the death of the original tenant although in a sense claiming in his or her own right, i.e. not claiming under the statutory tenant in the same way as an assignee or legatee of a contractual tenancy may be said to claim under the grantor or testator - nevertheless becomes a statutory tenant under the same tenancy by virtue of which the original statutory tenant was in possession."

Applying these principles, protection was denied to the daughter.

(9) In *Sheriin v. Brand* (1956) 1 QB 403:(1956) 1 All ER 194, the order against the tenant was a conditional order passed on 2nd December 1953. It decreed that the landlord recover possession from the tenant and also a sum of 36 4s. 8d, for arrears and mesne profits and 11 8s. for costs. It was further ordered:

"It is ordered that judgment for possession shall not be enforced for twenty-eight days and for so long thereafter as the (tenant) punctually pays to the (landlord) the arrears of rent, mesne profits and costs by instalments of 10 forthwith and 13s. 7d. per week And it is further ordered that the judgment shall cease to be enforceable when the arrears of rent, mesne profits and costs referred to above are satisfied."

The tenant defaulted in the payment of the whole amount but the landlord did not execute the order before his death. he died on 26th January 1956. At the time, his daughter lived with him and qualified to be a tenant u/s 12(1)(g). The appeal Court held that the defendant had become entitled to the statutory tenancy as it existed immediately before the death of the statutory tenant subject to the condition of the order of 2nd December 1958 and that the landlord was not entitled to possession. In the leading judgment, Sir Raymond Evershed, M. R. says:

"The more correct and strict view is that when a tenant is said to have the right and obligation in Section 15(1), as affected by the exercise of the powers conferred by Section 4(2) of the Act of 1923, the tenant is not confined to the individual in occupation when the original contractual tenancy came to an end, or

the individual against whom an order is made u/s 4(2) of the Act of 1923, but includes such member of the person's family who, after his death, may satisfy the qualification of the definition Section 12(1)(g)."

The learned Master of the Rolls accepted the principle of *Tickner v. Clifton* 1929 1 KB 207 in part, that is, held that the order was not binding on the successor as she was not a party to the proceeding and observed (p. 202):

". But it does not follow, in my judgment, that the defendant becomes a statutory tenant without any regard to the order of December 2, 1953, able to make, as it were a fresh start from January 26, 1955, as though that order had never been made the so called tenancy to which the defendant became entitled is the tenancy as it existed immediately before the death of Mr. Phelps, with and subject to all the incidents then attached to it, including those imposed by the court in the exercise of its powers u/s 4(2) of the Act of 1923. At the relevant date the so called tenancy, had, as the result of the order, an infirmity, viz., that if default were made (as in fact it had been) in paying off the arrears, then the landlord was entitled, by virtue of the order, to apply at once for a warrant for possession. It is true, of course, that the landlord cannot apply now in that action for a warrant of possession against the defendant. She must start fresh proceedings against the defendant asking for possession; but that is merely a matter of procedure occasioned by the fact that Mr. Phelps is dead. Immediately before his death, she had the right under the order to apply for immediate possession, which prima facie she would have been entitled to obtain. In proceedings against the defendant, she can so assert, and she can allege any other facts which have occurred since. I do not think that the landlord's right which I have tried to formulate, has been altogether lost by the death of Mr. Phelps The effect of Section 12(1)(G) is not, in my judgment, to create some new tenancy so much as was pointed out by Scott, L. J., in 1946 1 KB 8 nor even to provide strictly for transmission, as I have said, from the previous occupant She, as it were, steps into the shoes of Mr. Phelps and takes his place for all the purposes of the Acts."

Birket, L. J., concurring with the Master of Rolls, adopts the ratio of the judgment of Jenkins, L. J., in 1950 2 All ER 1186 and says (p. 206):

". while she is not liable for these arrears of rent, her tenancy is subject to the same infirmities (to use the word my Lord has used) as the tenancy of Mr. Phelps at the date of his death. Her tenancy cannot, I think, be better than the tenancy that Mr. Phelps enjoyed. To use the familiar phrase, the defendant really stepped into his shoes on the death of Mr. Phelps

Romer, L. J., concurring says (p. 208):

" I am quite satisfied, however, that she takes it subject to the order of December 2, 1953, in so far as the provisions of that order are applicable to her as a tenant. The defendant is not, of course, personally subject to the judgment for possession or for payment of the arrears of rent or costs, for they were made

against Mr. Phelps alone, and she was not a party to the proceedings. But if she claims a tenancy she can claim only by succession; the tenancy to which Mr. Phelps was entitled and to which the defendant claimed, on his death, to succeed" had certain incidents attached to it by the order of the Court; and the defendant cannot, in my judgment, claim the benefit of the tenancy and at the same time disclaim the incidents. These incidents are that in addition to and as distinct from the standard rent, the specified weekly sums have to be paid until they have been fully discharged; and on the defendant defaulting in these payments, it may be (I say no more) that the landlord could obtain an order for possession in proceedings brought against her for that purpose." (The italics (here into " ") is ours).

(10) English Judges have variously described the successor of the tenant under the Rent Acts. This much, however, is clear from the judgments that the successor takes what is left by the statutory tenant at his death and though a judgment does not bind the successor as he was not a party to the action the liability fastens as it were to his tenancy, and the landlord can succeed in getting possession in a separate proceeding. It may be that the conclusion may be justified under the English Rent Acts, and the English Procedural and succession Laws. Section 15 of the Increase of Rent and Mortgage Interest (Restrictions) Act of 1920 gives by express language to such a tenant all the rights of the contractual tenancy consistent with the Act. Moreover, so far as we are aware, there are no provisions parallel to sections 12, 13, 16 and 17-A of our Act. Whatever may be the reasons for the reluctance of the English Judges to describe the successor under S. 12(1)(g) of the 1920 Act as "inheriting" the interest of the deceased tenant, the practical effect of the judgments referred to is that the successor u/s 12(1)(g) takes rights exactly similar to those taken by an heir.

(11) Again, there are inconsistencies in the english decisions. In 1929 1 KB 207 it is held that the successor under SEction12(1)(G) of the 1920 Act takes entirely a new tenancy and is not liable for arrears of rent, while in Lask v. Cohen (1925) 1 KB 584 it is held that he is entitled to sue the sub-tenant, that is, to have the rights of the deceased tenant and not his liabilities.

(12) English decisions are no doubt entitled to great respect but they do not bind us. The principle underlying section 5(11)(c) appears to us to be one of succession or inheritance, for the right can only avail a member of the family of the deceased tenant and provided he or she lived with him. The right of the statutory tenant is treated as strictly personal right, and hence the difficulty of arriving at a satisfactory solution of the problem. Moreover, the section applies to contractual tenancies also. It seems to us that it would produce more just result and avoid procedural delays if it is held that the Legislature which created the "statutory tenant" also willed that, to the limited extent stated in S. 5(11)(C), his tenancy is transmissible, and heritable. It seems to us that Romer, L. J., is with respect, right when he says that the daughter could only claim by "succession".

If that is so, we do not see why this construction cannot be carried to its logical conclusion to make the tenant liable for the defaults of the previous tenant and enable the landlord to continue the proceeding, if, as Sir. Evershed, M. R., put it, it is merely a matter of procedure. It does not involve any injustice to the successor tenant as no one compels him to take the tenancy and he would have gone out along with the tenant if he were not dead.

(13) One provision to which there is no parallel in English Rent Restriction Act is the definition of legal representative in S. 5(4). It carries the same meaning as in the CPC and also includes the joint family of which the deceased tenant was a member; and yet there is no direct reference to legal representative in any of the sections. Section 2(11) of the CPC defines "legal representative" to mean a person who in law represents the estate of a deceased person, and includes one who intermeddles with the estate of the deceased.. The purpose of defining "legal representative" in the Rent Act could only be to indicate that one who succeeds the deceased tenant, having regard to the wide terms in which legal representative is defined, should be regarded as his representative for the purposes of the Act. In (1951) 2 All E. R. 582 while considering Section 12(1)(g) of the 1920 Act, the House of the Lords held, overruling the earlier decisions of the English Courts, that it applies to contractual tenants also. It expressed the opinion that, in such a case, the contractual tenancy which devolves on heirs is suspended during the period of the statutory tenancy in favour of one qualifying for it under that section. In England, succession depends upon the class of property but here it is not so, and the adoption of the doctrine may create may difficulties. In the case of long term tenancies, it may not cause much difficulty but in the case of monthly tenancies complications are bound to arise. It is possible to argue that succession to the tenancy governed by the Rent Act is limited to those who fall within Section 5(11)(c), this being a special provision, and that, to this extent, the general law is modified. However, that is different matter.

(14) In Parwatibai Namdeo Vs. Jagannath Maruti Warthi, the contractual tenant was a defaulter in the payment of rent. After his death, his wife continued in possession. the landlord applied to the Rent Controller for permission to serve upon her a notice to quit on grounds of arrears of rent and her being a habitual defaulter. The Controller rejected the application but in appeal the landlord succeeded. The tenant approached the High Court under Article 227 of the Constitution. It was contended for the widow that her tenancy was independent and the default of her husband could not prejudice her. The Court held that the tenancy which the widow acquired was the same and not different; in other words, the tenancy was a continuous one. It is true that in the Central Provinces and Bear-Letting of Houses and Rent Control Order, 1949, the definition did not contain a clause similar to Section 5(11)(c) of the Bombay counterpart. Even so, in our view, the conclusion cannot, be different, since by the addition of clause (c)in Section 5(11) the Legislature clarified the principle of succession to the tenant, whether contractual or statutory. A similar conclusion was reached by

Chitale, J. in Constantine Musarato v. Patrolina Alvia Dias, C. R. A. 245 of 1962 dated 23-7-1962 (Bom), with reference to the present section, and in our view, with respect, rightly. The opponent, therefore, has no defence.

(15) In the result, we set aside the judgments and decrees of the Courts below and direct a decree in eviction against the opponent. The petitioner will get his costs from the opponent in all courts.

(16) Petition allowed.