

(2003) 11 BOM CK 0029

In the Bombay High Court

Case No : Civil Rev. Application No. 13 of 2003

K. Mukta Ashok Khankhoje

APPELLANT

Vs

Namdeorao Tukaram Khutaphale

RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 16, 16(1)
Transfer of Property Act, 1882 — Section 106

Citation : (2004) 2 ALLMR 59 : (2004) 1 MhLj 941

Hon'ble Judges : S.G. Mahajan, J

Bench : Single Bench

Advocate : A.C. Dharmadhikari, for the Appellant; S.P. Kshirsagar, for the Respondent

Final Decision : Dismissed

Judgement

S. G. Mahajan, J.—The present respondent, who is the original plaintiff, brought the civil suit No. 316/2000 before the Small Causes Court Nagpur for ejectment against the present revision petitioner, who is the original defendant, on the ground of bona fide need and non user of the premises for the purpose for which they were let out, under the provisions of Section 16(1)(g) and (n) of Maharashtra Rent Control Act, 1999.

2. Before the institution of suit the plaintiff/respondent had given a notice dated 06-07-2000 terminating the tenancy of the defendant/revision petitioner w.e.f. 31-08-2000. In January and April 2001 the plaintiff/respondent accepted the amounts from the defendant/revision petitioner which according to defendant/revision petitioner were paid towards the rent and according to plaintiff/respondent the same were towards the damages for use and occupation. The defendant/ revision petitioner filed an application before the Small Causes Court for rejection of plaint or dismissal of suit on the ground that the plaintiff/respondent had accepted the rent after the service of notice terminating the tenancy of the defendant and the acceptance of rent was a waiver of notice of

termination of tenancy on his part. This application was rejected by the Small Causes Court on the ground that the notice of termination of tenancy was not necessary for seeking eviction u/s 16 of the Maharashtra Rent Control Act. This rejection is impugned in the present revision.

3. In this revision the learned counsel for the defendant/revision petitioner raised the point that even in the cases of eviction under the provisions of Section 16 of Maharashtra Rent Control Act the tenancy has to be terminated first by issuing a notice u/s 106 of the Transfer of Property Act and as such the notice terminating the tenancy is essential.

4. It is the contention of the learned counsel for the plaintiff/respondent that for the eviction of a tenant under the provisions of Section 16 a notice of termination of tenancy u/s 106, Transfer of Property Act is not necessary and the notice that was given by the plaintiff/respondent terminating the tenancy of the defendant was redundant. The learned counsel for the plaintiff/respondent canvassed that the tenancy can be terminated by issuing a notice u/s 106, Transfer of Property Act without any reasons, on the other hand the provisions of Section 16 of Maharashtra Rent Control Act incorporate various "grounds on which the landlord can seek the eviction of a tenant and the eviction can be granted by the Court only if the conditions laid down in those provisions are satisfied. The learned counsel interpreted the provisions saying that the tenancy would be terminated u/s 16 of Maharashtra Rent Control Act only by the Court if the Court is satisfied that the conditions laid down in those provisions are fulfilled and unless those conditions are satisfied there can be no termination. According to him in such event the issuance of notice u/s 106, Transfer of Property Act is redundant. In support of these submissions the learned counsel for plaintiff/respondent cited V. Dhanapal Chettiar Vs. Yesodai Ammal, . He also placed reliance on the observation made in para 20 of Hindustan Ferrodo Ltd., now known as Hindustan Composites Ltd. Vs. Mrs. Hari Lachman Hasija, .

5. The ratio of V. Dhanapal Chettiar's case is that for the eviction of a tenant under any State Rent Control Act it is not necessary to give notice u/s 106, Transfer of Property Act. Determination of lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. Making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106, Transfer of Property Act.

6. The relevant observations on which the counsel for plaintiff/respondent placed reliance in the case of Hindustan Ferrodo Ltd. are as below:

"It is well-settled that when an eviction of a tenant is sought for in terms of the provisions of the Rent Legislation in force in the State, the procedure for the purpose of eviction of such tenant being specifically provided under such rent

legislation itself, there is no need to take resort to the provisions of the general law i.e. the Transfer of Property Act and therefore the question of service of notice u/s 106 of the Transfer of Property Act in such cases does not arise."

7. The learned counsel for defendant/revision petitioner contended that the ratio of the case of V. Dhanapal Chettiar v. Yesodai Ammal is not applicable to the present case since the cited case is based on the provisions of enactments, different than Maharashtra Rent Control Act 1999, one of which is Bombay Rents, Hotel And Lodging House Rates Control Act, 1947, which is now repealed by The Maharashtra Rent Control Act.

8. The learned counsel for the defendant/revision petitioner canvassed that Section 16 of the Maharashtra Rent Control Act does not contain the words "Notwithstanding anything inconsistent in any other law for the time being in force" as they appear in Section 39 of the said Act. He submitted that Section 39 of the Maharashtra Rent Control Act excludes the applicability of other Acts and since no such wording appears in Section 16, the applicability of the other Acts such as Transfer of Property Act, cannot be said to have been excluded. As per the learned counsel Section 16 of the Maharashtra Rent Control Act does not over-ride the mandate of Section 106, Transfer of Property Act and the said provision is well applicable. He pointed out that in Sub-section (2) of Section 15 of the Act there is a reference to Section 106 of Transfer of Property Act and the said reference is significant. He further canvassed that the provisions of Section 15 and 16 in the Maharashtra Rent Control Act should be read harmoniously. It is his further contention that the legislature did not intend to override the provisions of Transfer of Property Act.

9. The learned counsel for defendant/revision petitioner further canvassed that Section 16 of the Maharashtra Rent Control Act, 1999 states that the landlord is entitled to recover possession. In his opinion the termination of a tenancy is a separate thing and unless the termination is made the stage of recovery of possession would not come. According to him what is contemplated in Section 16 is only the filing of suit for the recovery of possession but prior to that the tenancy should be terminated by issuing a notice u/s 106 of the Transfer of Property Act. He further submitted that Section 16 does not say that no termination of tenancy is required to be made.

10. The learned counsel for the defendant/revision petitioner further contended that if the tenancy is contractual not for a particular period and no time is prescribed so as to say that it would come to an end by efflux of time, then unless and until the contract is put to an end by the termination of tenancy the tenant cannot be taken as a trespasser and the suit for ejectment cannot be filed. According to him the protection which is given to the tenant by Section 106 of the Transfer of Property Act cannot be taken away by isolating Section 16 of the Maharashtra Rent Control Act.

11. The counsel for defendant/revision petitioner also canvassed that in this

particular case the tenancy was actually terminated by the respondent by giving a notice u/s 106, Transfer of Property Act. After the termination it was a statutory tenancy and thereafter the plaintiff/respondent accepted the rent. This in his opinion amounts to waiver.

12. As already stated above, the learned counsel for defendant/revision petitioner submitted that the case of V. Dhanapal Chettiar has no application to the present case. He distinguished the case by inviting the attention of this Court to the following passage in para 9:

Adverting to the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 it would be found from the definition in Section 5 that any person remaining in the building after the determination of the lease is a tenant within the meaning of Clause (11).

The definition of a tenant in Section 5 of Sub-section (11) Clause (b) of the Bombay Rents, Hotel And Lodging House Rates Control Act reads as below :

Tenant means any person by whom or on whose account rent is payable for any premises and includes :

a).....

aa).....

b) any person remaining after the determination of the lease, in possession with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the first day of February 1973.

As per the learned counsel, in V. Dhanapal Chettiar's case the issuance of notice u/s 106, Transfer of Property Act was found to be redundant or surplusage because as per the definition of tenant in Section 5(11)(b) as stated above even if the tenant remains in building after the termination of the lease he would still be regarded as a tenant. The learned counsel submitted that the above category of the tenant which is to be found in Section 5(11)(b) of Bombay Rent Act is excluded from the definition of tenant in Maharashtra Rent Control Act as is given in Section 7(15) of the said Act. In such circumstances, as per the learned counsel for revision petitioner, the termination of tenancy is necessary before making an application for the recovery of possession u/s 16 of the Maharashtra Rent Control Act.

13. The learned counsel for defendant/revision petitioner cited Smt. Shakuntala S. Tiwari Vs. Hem Chand M. Singhania, , in which there is a reference to the case of V. Dhanapal Chettiar v. Yesodai Animal. The observations made in this cited case in para 5 to which the attention of this Court was drawn are to the effect that the notice u/s 106, Transfer of Property Act in the eviction case under the State Rent Act is not compulsory or obligatory because under the extended definition of a tenant under the various State Rent Acts the tenant continues to be a tenant even though the contractual tenancy has been determined by giving

a valid notice u/s 106, Transfer of Property Act.

14. The learned counsel for defendant/revision petitioner further cited Sri Ramakrishna Theatres Ltd. Vs. General Investments and Commercial Corporation Ltd. and others, . He invited the attention of this Court to the observations in para 21 of the cited case which are to the effect that even if any other law or contract provides for recovery of possession the same shall be of no effect and the eviction can be made only on the grounds stated in the clauses which would indicate that the landlord should have a right to recover possession and that right cannot be held to vest in him during the period of the term lease unless there is something in the lease deed which provides for the determination of the lease. On the basis of these observations the learned counsel canvassed that the tenancy is required to be terminated first in the case where the tenant holds the lease-hold premises under the term lease. The counsel for plaintiff/ respondent submitted that this authority is not applicable to the present case because the cited authority is in different context and the issue involved in the present case was not involved in that case.

15. It is not possible for me to accept the submissions made by the learned counsel for the defendant/revision petitioner. The V. Dhanapal Chettiar Vs. Yesodai Ammal, is clearly applicable to the present case. The ratio of the abovesaid case cited by the learned counsel for plaintiff/respondent is that the provisions of the various State Rent Acts have overriding effect over the termination of contractual tenancy by issuing a notice u/s 106, Transfer of Property Act. Even if the contractual tenancy is determined by giving a notice still as per the State Rent Acts, the tenant cannot be evicted until the landlord makes out a case for his eviction under the concerned Rent Act and the order or decree for eviction is passed. The notice u/s 106, Transfer of Property Act in that case is not necessary and the issuance of notice u/s 106, Transfer of Property Act is merely a surplusage.

16. As argued by the learned counsel for the dependant/revision petitioner there is a reference to Section 106 of Transfer of Property Act in Sub-section (2) of Section 15 of Maharashtra Rent Control Act. But the said provision is for the suit for recovery of possession by the landlord on the ground of non payment of standard rent or permitted dues and such suit cannot be instituted until the expiration of 90 days after the notice in writing of the demand of standard rent or permitted increase has been served upon the tenant. In fact that is not a notice u/s 106, Transfer of Property Act but it is to be served in that manner. That is a special provision for the purpose of eviction on the above ground. It cannot be interpreted to mean that for the eviction on the grounds mentioned in Section 106, Transfer of Property Act would be necessary.

17. No doubt, while arriving at the conclusion that the notice u/s 106 of the Transfer of Property Act is a surplusage while the tenant is proposed to be evicted under the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the definition of tenant u/s 5(11)(b) is taken into

consideration by their lordships in the case of V. Dhanapal Chettiar v. Yesodai Ammal However, to my mind the said definition of tenant in Section 5(11)(b) of Bombay Rent Act is provided merely by way of abundant precaution. Even without that definition the tenant continues to be the tenant even after the determination of lease until an eviction, order is passed against him and he cannot be evicted unless a ground is made out for his eviction in accordance with the said Rent Act. So although the abovesaid category of tenant which is found in Section 5(11)(b) of Bombay Rent Act is not included in Maharashtra Rent Control Act, the purport of the provisions of Maharashtra Rent Control Act would be the same as in the case of other State Rent Acts. It would be useful to refer to the following observations in V. Dhanapal Chettiar's case in para 11.

"It is true that the Rent Act is intended to restrict the rights which the landlord possessed either for charging excessive rents or for eviction tenants. But if within the ambit of those restricted rights he makes out his case it is a mere empty formality to ask him to determine the contractual tenancy before institution of a suit for eviction. As we have pointed out above this was necessary under the Transfer of Property Act as mere termination of the lease entitled the landlord to recover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must determine the contractual tenancy. It is of no practical use after so many restrictions of his right to evict the tenant have been put. The restricted area under the various State Rent Acts has done away to a large extent with the requirement of the Law of Contract and the Transfer of Property Act. If this be so why unnecessarily, illogically and unjustifiably a formality of terminating the contractual lease should be insisted upon?"

Even if the category of tenant which is stated in Section 5(11)(b) of Bombay Rent Act which says that even after the termination of tenancy the person continues to be a tenant, is not included in the Maharashtra Rent Control Act, when the tenant cannot be evicted unless the grounds are made out and the conditions laid down u/s 16 of the Maharashtra Rent Control Act are fulfilled, there would be no dual requirement one of issuance of notice u/s 106 of the Transfer of Property Act and then making out a ground under that section for eviction. Of course, a special provision can be made in a Rent Act requiring the issuance of a notice u/s 106, Transfer of Property Act, as it was there in C. P. and Berar Letting of Premises and Rent Control Order, 1949. But in Maharashtra Rent Control Act there is no such provision. In view of the above discussion the notice u/s 106 of the Transfer of Property Act was not necessary in the present case.

18. The learned counsel for defendant/revision petitioner vehemently argued that the notice u/s 106 of the Transfer of Property Act was actually issued by the plaintiff/respondent and thereafter the rent was accepted which amounts to waiver. However, when the notice itself was redundant there was no question of any waiver.

19. In the above view of the matter I hold that the Trial Court rightly rejected the

application of the defendant/revision petitioner. In the result the revision is dismissed.