

(1969) 03 BOM CK 0024
In the Bombay High Court
Case No : Civil Appeal No. 808 of 1966

Khemchand Dayalji	Vs	APPELLANT
Mohammadbhai Chandbhai		RESPONDENT

Date of Decision : 24-03-1969

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11, 28, 49
Bombay Reorganisation Act, 1960 — Section 87
Presidency Small Cause Courts Act, 1882 — Section 17, 18, 19, 50, 53

Citation : (1970) 72 BOMLR 428 : (1970) MhLj 848

Hon'ble Judges : V. Ramaswami, J;J.C. Shah, J;A.N. Grover, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

J.C. Shah, J.—The respondent is the owner of a house in the town of Ahmedabad. The appellants are the tenants of that house at a monthly rental of Rs. 2,171. Under the agreement of lease the appellants were to pay out of the agreed rent Rs. 810 per month, and the balance was to be appropriated towards a loan advanced by them to the respondent for constructing the house. The appellants had also agreed to pay municipal taxes and electricity charges.

2. The appellants filed suit No. 1308 of 1963 in the Court of the Small Causes, Ahmedabad, for an order inter alia, determining the standard rent of the premises in exercise of the power u/s 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act LVII of 1947. The Court of Small Causes, Ahmedabad, on an application filed by the appellants fixed the contractual rent as "interim standard rent" and directed the appellants to pay the rent and municipal taxes. Pursuant to this order, the appellants deposited Rs. 2,403 as rent and Rs. 8,921.25 due as municipal taxes for the year 1964-65. An application by the respondent to withdraw the amount deposited in Court was resisted by the appellants. The Court permitted the respondent to withdraw Rs. 2,403 but not the municipal taxes. The respondent then obtained an order for

the issue of a distress warrant u/s 58 of the Presidency Small Cause Courts Act XV of 1882 read with Rule 5 of the Rules framed under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for recovery of the amount due as municipal taxes. Distress was levied, and the order was confirmed. A revision application moved in the High Court of Gujarat against that order was rejected.

3. In support of this appeal counsel for the appellants urges that Rule 5 of the Rules framed u/s 49 of the Bombay Rents, Hotel and Lodging House Rates Control Act LVII of 1947, is ultra vires the State Government; that the Court of Small Causes, Ahmedabad has in any event no jurisdiction to pass an order issuing a distress warrant when trying a suit or proceeding under Bombay Act LVII of 1947 especially when an application for determination of standard rent u/s 11 of the Act is pending; and that the municipal taxes and electricity charges do not constitute rent which may be recovered by the issue of a distress warrant.

4. By the express terms of the tenancy the appellants had undertaken to pay the municipal taxes and electricity charges as part of the rent; it is not open to them to contend that they are not rent recoverable by the issue of a distress warrant. The last branch of the argument has, therefore, no force.

5. The relevant provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act LVII of 1947 and other statutes which have a bearing may first be noticed. Bombay Act LVII of 1947 was intended to control rents and to confer protection against eviction upon tenants of premises in certain urban areas in the Province of Bombay. By Section 28 of the Act certain Courts were designated as Courts of exclusive jurisdiction to entertain and try suits and proceedings between a landlord and tenant, relating to recovery of rent or possession to which the provisions of the Act applied, and also to decide claims or questions arising under the Act. Section 28 as originally enacted and later amended by Bombay Acts LVIII of 1949 and XV of 1952, in so far as it is material reads :

(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,

(a) in Greater Bombay, the Court of Small Causes, Bombay,

(na) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and

(b) ...

shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of Sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question...

Section 28 did not set up new Courts to try suits or proceedings between landlords and tenants: it invested existing Courts with exclusive jurisdiction to try suits and proceedings of the nature set out and claims or questions arising under the Act. Section 81 of the Act provides, inter alia, that the Courts specified in Section 28 shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them. Section 49 authorises the State Government to make rules for the purpose of giving effect to the provisions of the Act and in particular to make rules, among other subjects, for the procedure to be followed in trying or hearing suits, proceedings (including proceedings for execution of decrees and distress warrants), applications, appeals and execution of orders. Pursuant to the authority conferred, rules were framed by the Government of Bombay and Rule 5 which dealt with the procedure to be followed by the Court of Small Causes, Bombay, for suits, proceedings, appeals etc. provided insofar as it is material:

In such of the following suits and proceedings as are cognizable by the Court of Small Causes, Bombay, on the date of the coming into force of these Rules, namely :-

(1) ...

(2) proceedings under Chapters VII and VIII of the Presidency Small Cause Courts Act, 1882, and

(3) proceedings for execution of any decree or order passed in any such suit or proceedings, the Court of Small Causes, Bombay, shall follow the practice and procedure provided for the time being (a) in the said Act, except Chapter VI thereof, and (b) in the rules made u/s 9 of the said Act.

6. By the enactment of the Bombay Reorganization Act XI of 1960 a separate State of Gujarat was constituted out of the territory which formed the State of Bombay, and the area within the city limits of Ahmedabad formed part of the State of Gujarat. By the Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960, Clause (a) of sub- Section (1) of Section 28 of Bombay Act LVII of 1947 as it was originally enacted was deleted. The Legislature of the State of Gujarat enacted the Ahmedabad City Courts Act XIX of 1961 which by Section 17 provided that the Presidency Small Cause Courts Act, 1882 (XV of 1882), shall extend to and come into force in the City of Ahmedabad on and from the appointed day. By Section 18 it was provided :

The Presidency Small Cause Courts Act, 1888 (XV of 1882), and the Bombay Bents, Hotel and Lodging House Rates Control Act, 1947 (Bom. XVII of 1947), shall in their application to the City of Ahmedabad stand amended in the manner and to the extent specified in the Schedule." By Section 19 it was provided :

With effect on and from the appointed day...

the Provincial Small Cause Courts Act, 1887 (IX of 1887), and all rules, notifications and orders made thereunder shall cease to apply to, or be in force,

in the City of Ahmedabad,...

7. By the Schedule certain amendments were made in the Presidency Small Cause Courts Act, 1882, in its application to the City of Ahmedabad. By Clause 13 of the Schedule, Section 50 of the Presidency Small Cause Courts Act was to apply to every place within the City of Ahmedabad. Certain amendments were also made in Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and in Sub-section (7) of Section 28, before Clause (aa) the following clause was inserted;

(a) in the City of Ahmedabad, the Court of Small Causes of Ahmedabad.

8. By the enactment of the Ahmedabad City Courts Act, 1961, the proceedings before the Court of Small Causes at Ahmedabad were governed by the Act and by virtue of the amendment made in Section 28 of Bombay Act LVII of 1947 it became a Court of exclusive jurisdiction to try suits, proceedings, claims and questions arising under that Act. Being a Court governed by the Presidency Small Cause Courts Act, the Ahmedabad Court of Small Causes was competent to exercise, subject to the Ahmedabad City Courts Act, all the powers which a Presidency Small Causes Court may exercise. Power to issue a distress warrant being expressly conferred by Section 53 of the Presidency Small Cause Courts Act upon the Courts governed by it, the Court of Small Causes, Ahmedabad, was competent to exercise that power.

9. Rule 5 was framed under the Bombay Act, LVII of 1947 in exercise of the authority conferred by Section 49(2)(Hi). After the enactment of the Ahmedabad City Courts Act, 1961, Rule 5 as originally framed by the Government of Bombay continued in force by virtue of Section 87 of the Bombay Reorganization Act, XI of 1960, and applied to the Ahmedabad Small Causes Court. When Rule 5 was framed under Bombay Act LVII of 1947 it was not ultra vires, and it is not shown to have become ultra vires after the enactment of the Ahmedabad City Courts Act in its application to the City of Ahmedabad.

10. The argument that Section 28 sets up a new set of Courts with special powers and jurisdiction is without substance. Section 28 merely confers upon the existing Courts exclusive jurisdiction in respect of matters relating to possession of premises and recovery of rent and to determine claims and questions arising under that Act. On that account it does not become a Special Court: it is a Court which is competent to exercise all the powers which are conferred upon it by virtue of its constitution under the statute which governs it. The Court of Small Causes at Ahmedabad had, therefore, power to issue distress warrant and that power could be exercised even in respect of suits and proceedings which were exclusively triable by it by virtue of Bombay Act LVII of 1947.

11. We are also unable to hold that so long as application for fixation of standard rent is pending, the Court's jurisdiction to issue a distress warrant remains suspended. Until standard rent is determined, or an interim order is made, rent at the contractual rate is payable and process for recovery by distress warrant

may always be adopted. Section 11 of Bombay Act LVII of 1947 confers upon the Court power to fix standard rent and permitted increases in certain cases. The Court is also competent to determine interim standard rent, and direct payment pending final determination of standard rent.

12. The appellants applied for fixation of standard rent and invited the Court to pass an order fixing interim standard rent and the Court of Small Causes proceeded to pass the order for payment of rent and municipal taxes. In the present case there was an express order of the Court requiring the appellants to deposit in Court Rs. 810 per month and also to deposit municipal taxes. The Court of Small Causes ordered that the amount deposited by the appellants towards municipal taxes shall not be paid over to the landlord. The amount was on that account not available to the respondent. The respondent was unable to pay the taxes and the Municipality threatened to attach the property. The amount of municipal taxes was due and it was payable by the appellants. Though deposited in Court, it could not be withdrawn by the respondent. The municipal taxes were, therefore, in arrears and a distress warrant could be applied for u/s 53 of the Presidency Small Cause Courts Act by the respondent.

13. It was urged that the appellants had to pay the amount of interim standard rent twice over; once when they deposited it in the Court and again when they satisfied the demand to avoid execution of the distress warrant. The landlord undoubtedly cannot obtain the amount twice over. But that does not mean that when the tenant has not made the amount available to the landlord the application for distress was not maintainable.

14. The argument that the erroneous order passed by the Court of Small Causes preventing the landlord from recovering the amount of municipal taxes could have been got corrected by approaching the superior Courts and so long as that order stood, no distress could be levied, ignores the fact that the appellants had persuaded the Court of Small Causes to pass that order. In our judgment, there was no bar to the respondent maintaining the application for distress.

15. The appeal fails and is dismissed with costs.