
(1995) 07 GUJ CK 0060
In the Gujarat High Court

Khemchand Kalidas Mehta

APPELLANT

Vs

Kothari Gubharuchand Motilal

RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(g), 13(1)(g), 13(1)(k), 13(1)(S), 13(2)

Citation : (1996) 2 GLR 404

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—The petitioner who is the original defendant-tenant has impugned the ejectment decree passed against him by filing this revision u/s 29(2) of the Bombay Rent Act.

The respondent is the original plaintiff-landlord who is the owner of one residential house bearing No. E/6/155 situated in Galeseth Street at Radhanpur. The plaintiff was the owner of half portion of the said house and later on he purchased the other half from one Mr. K.H. Shah by registered sale deed on 13-2-1975 with sitting tenant, i.e., petitioner. For the sake of convenience and brevity, the parties are hereinafter referred to as the landlord and tenant.

2. The demise property consisted of a room wherein defendant is the tenant at a monthly rent of Rs. 9/-. After the purchase of the property, the landlord served the defendant-tenant with a notice calling upon him to hand over the possession of the demise property. The claim of the possession was disputed by the tenant by giving reply. Thereafter, the landlord filed regular Civil Suit No. 60 of 1976 in the Court of Civil Judge (J.D.) at Radhanpur for the recovery of possession of the demise property on three grounds, viz., arrears of rent for more than six months, personal bonafide and reasonable requirement and non-user of the demise property. The defendant-tenant resisted the suit by filing written statement Ex. 10, He, inter alia, contended that he had gone to Bombay in search of employment and his family is staying in the demise premises and that he used to

come to Radhanpur frequently. He disputed all the grounds for eviction. On appreciation of the facts and circumstances the trial Court decreed the suit for possession on the ground of personal requirement and non-user of the demise premises. The trial Court refused to pass decree on the ground of arrears of rent. The tenant carried the matter before the District Court by filing Regular Civil Appeal No. 54 of 1978. The appellate Court partly allowed the appeal. The decree for possession came to be confirmed on the ground of non-user of the demise premises. Therefore, the tenant has challenged the legality and validity of eviction decree by filing this revision u/s 29(2) of the Bombay Rent Act.

3. The contention is raised on behalf of the tenant that the eviction decree is erroneous and illegal. The landlord has not appeared personally or through Advocate, in this revision petition.

4. The landlord filed the suit on three grounds. The trial Court decreed the suit on two grounds. The trial Court found that the demise premises are required reasonably and bona fide for the personal use and occupation and that greater hardship would be caused by refusing to pass decree for eviction. The trial Court has also found that the defendant-tenant has not used the demise premises without reasonable cause for a continuous period or more than six months immediately preceding to the date of the suit. Thus, decree for ejectment came to be passed u/s 13(1)(g) and Section 13(1)(k) of the Bombay Rent Act. Decree was refused on the ground of non-payment of rent u/s 12(3)(a) or 12(3)(b) of the Bombay Rent Act. The appellate Court has confirmed the decree on the ground of Section 13(1)(k) only.

5. The decree of ejectment concurrently recorded by both the Courts below on the ground of non-user u/s 13(1)(k) of the Bombay Rent Act is found to be quite justified. The Courts below have recorded concurrent finding of facts. This Court in a revision u/s 29(2) of the Bombay Rent Act cannot reappraise and re-examine the factual findings in absence of any misreading of evidence or perversity of findings or illegality. Though the power of this Court in a revision u/s 29(2) of the Bombay Rent Act is little wider than the power of revisional Court u/s 115 of the Code, this Court cannot be converted into an appellate forum. Both the Courts below have recorded finding of fact that there is non-user and therefore, the tenant is liable for ejectment u/s 13(1)(k) of the Bombay Rent Act.

6. It has been contended that the finding with regard to non-user recorded by the Courts below is perverse and illegal. This submission does not appear to be correct and acceptable in the light of the facts and circumstances emerging from the record of the present case. It is a case of the landlord from the inception that the defendant-tenant has not used the premises since he has purchased the same. The allegation of non-user of the demise premises is accepted by the trial Court and is confirmed by the appellate Court and tightly so in the opinion of this Court.

7. It contention of the tenant is that he went to Bombay in search of employment

and his family is residing in the demise premises and he is also frequently visiting. This contention is found incorrect and unsustainable by both the Courts below; It cannot be contended that this finding of fact is perverse or illegal or unreasonable.

8. Section 13(1)(k) of the Bombay Rent Act reads as follows:

13(1)(k) That the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

The object and the scheme of Clause (k) of Sub-section (1) of Section 13 is that the tenant should use the premises for the purpose for which the premises were let. He cannot keep the premises closed or locked without using them in absence of reasonable cause. Needless to state that there is a public policy under this clause that no tenant should be allowed to defeat the object and purpose of Clause (k) of Sub-section (1) of Section 13. If the Court is satisfied that the tenant has not used the demise premises for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit without any reasonable cause, the Court is empowered to pass an ejectment decree.

9. The demise premises are found unused for- more than 12 to 13 years by the trial Court. The appellate Court has also found that the demise premises are not used for at least more than five to six years. This- finding of fact has remained unassailable. The landlord has successfully proved that the demise premises are not used for the purpose for which they were let for a continuous period of more than six months immediately preceding the date of suit and therefore, he is entitled to decree of ejectment. The landlord once having established a case of non-user, it is for the tenant to show that there was reasonable cause for the non-user. The contention of the tenant in the present case is that he had to go to Bombay in search of employment and he, as such, got employment in Bombay. It is also his case that he could not secure any employment in a place like Radhanpur where the demise premises are situated. A person who has secured employment at a place other than the place of his rented residence and who has settled elsewhere cannot be allowed to contend that there is reasonable cause for non-user on the ground of nonavailability of employment at that place. 11 he has not been able to secure a job or employment or he has not been able to carry on his financial activities in a place where the demise premises are situated and he settles at other station, he has to vacate the rented premises as it is a statutory ground available to the landlord for possession. Could a person be allowed to agitate a ground of reasonable cause for having not obtained or secured employment at the place where the demise premises are situated? The obvious answer would be in the negative. Such a contention runs counter to the spirit and object of Section 13(1)(k) of the Bombay Rent Act. There is a purpose and philosophy behind enacting this clause. If a person fails to make use of the demise premises without reasonable cause for a continuous period of six months

or more immediately preceding the filing of the suit, he cannot claim protection of the Bombay Rent Act. If a person is allowed to retain the demise premises on such a ground, it would adversely affect the interest of class of tenants who are waiting for accommodation as there is acute scarcity of residential accommodations.

10. No doubt, it is always open for the tenant to show that in a given case there is reasonable cause. If the tenant could prove that the non-user was due to reasonable cause, no decree for ejectment could be passed. Reasonable cause is a very wide connotation and the Court is obliged to consider the particular facts of each case before determining whether there is a reasonable cause or not. Temporary service or employment without settling elsewhere, spending long vacation outside, prolonged illness and treatment thereafter outside, or imprisonment for any reason could be said to be reasonable cause for non-user. The aforesaid grounds are illustrative and not exhaustive. Again, it may be clarified that what is reasonable depends on variety of circumstances and in tile light of the proved facts on record. What is reasonable in case of one person may not be reasonable in the case of others. The onus is on the tenant to repel the presumption that his possession has ceased and to repel it, the tenant must establish by evidence that the non-user was referable or- attributable to a reasonable cause. Spasmodic visit in the present case could never be said to be a reasonable cause for non-user of the demise premises. Both the Courts have found that the tenant had not used the premises for long. Even if it is presumed that the tenant makes casual visits to his house, that ipso-facto does not constitute a reasonable cause for non-user saving him from the rigours of the provisions of Section 13(1)(k) of the Bombay Rent Act. Where the premises are let for residence and there is continuous non-user, for years together, mere casual visit to the premises would not render the non-user as non-continuous. Constructive residence may not help the tenant. What is contemplated by the provisions of Section 13(1)(k) is the actual residence. Even if the plea of the tenant is accepted on its face value that he has been making spasmodic or casual visits to the premises, then also in the present case, it could not be said to be a regular or actual user for residence which is the lynchpin of the provisions of Section 13(1)(k) of the Bombay Rent Act.

11. It is found from the evidence that the tenant has migrated to Bombay, may be for his future prospects. But the fact remains, without any doubt, that he has been doing work at Bombay, staying at Bombay with his family, and he cannot be presumed to have plan to return permanently to the demise premises. Mere casual stay or visits is not sufficient in law to constitute the use of the premises for residence as envisaged by this clause. As residence involves more or less continuous stay at a place and therefore, actual and not constructive residence which matters. Again, it may also be mentioned that plea of occupation by licensee or a care-taker will not be sufficient. If a person leaves a care-taker or a licensee and starts living elsewhere for better future or otherwise and makes frequent visit to the premises also cannot be said to be a reasonable cause for

non-user. Persons who stay must be referable to the tenant such as family members and their stay must be continuous or more or less permanent. Mere assertion of animus revertendi is also not sufficient. But the tenant must couple and clothe the intention with some formal sign of it. i.e., preserving or retaining a representative or member of the family for his own home coming. Mere keeping an outsider or a stranger and going away elsewhere would not also spell out a reasonable cause for the non-user. What is reasonable cause is required to be decided and tried in the light of the given facts of each case.

12. The onus of Proof lies initially on the landlord to show that there is non-user of the demise premises for the purpose for which they were let for a continuous period of more than six months preceding to the date of the suit. If this could be shown successfully by the landlord, then the onus shifts to the tenant and it is he who has to show that there is a reasonable cause for the non-user. In the present case, the landlord has successfully established that there has been non-user of the premises, but the tenant has not been able to prove that the non-user is referable to a reasonable cause. The tenant should have shown to the satisfaction of the Court that there was reasonable cause for non-user by leading evidence during the course of trial which has not been done and therefore, eviction must follow.

13. Following aspects run counter to the contention raised by the tenant alleging that there was a reasonable cause:

1. That the notice and the summons came to be served, at Bombay address.
2. The tenant has not made the user of the electricity. Consumption of electricity could be shown by electric meter reading bills.
3. Ration card is also not produced. Electoral roll is not produced to show that his name continued in the same constituency.
4. No documentary evidence is produced about the purchase or sale of any transaction in the place where the demise premises are situated.
5. No witness is examined in support of his contention that there is reasonable cause for non-user.

The aforesaid aspects and such other factors are required to be examined while considering the contention of the tenant that there was reasonable cause for non-user of the demise premises for the purpose for which they were let for a period of more than six months as contemplated by Section 13(1)(k) of the Bombay Rent

14. Taking into account the factual scenario emerging from the record and the underlying purport and design of the provisions of Section 13(1)(k), this Court has no hesitation in finding that the tenant has not been able to show any reasonable cause for non-user which is established by the landlord attracting the rigours of the provisions of Section 13(1)(k) of the Bombay Rent Act. Therefore,

the decree for eviction recorded u/s 13(1)(k) for non-user by the trial Court and confirmed by the appellate Court is required to be affirmed in this revision.

15. The ground for eviction u/s 13(1)(g) for personal, reasonable and bona fide requirement for his occupation was not properly considered by the trial Court, In view of the admitted position, decree for ejectment u/s 13(1)(g) could not have been passed. There is no dispute about the fact that the landlord purchased the property with a sitting tenant by a registered sale deed on 13-2-1975. An amendment is made by introducing an Explanation in Section 13(1)(g) applicable to Gujarat State in Bombay Rent Act by virtue of which, a purchaser of a house or a property on or after 1-1-1964 is not entitled to eviction decree u/s 13(1)(g) of the Bombay Rent Act. There is no statutory ground available to the purchaser of a property for eviction on the ground of reasonable and bona fide requirement of self-occupation. This aspect is unfortunately not considered by the trial Court. The trial Court has wrongly passed decree for eviction on the ground of Section 13(1)(g) of the Bombay Rent Act. The trial Court has also seriously erred in recording finding about the hardship in favour of the landlord u/s 13(2) of the Bombay Rent Act without considering the Explanation which came to be inserted by the Gujarat Act 57 of 1963. It can be seen from the Explanation that the purchaser after cut-off date of 1-1-1964 is not a landlord by a statutory deeming fiction for the purpose of Section 13(1)(S). In the circumstances, the finding of the trial Court and granting of decree for eviction u/s 13(1)(S) is rightly reversed by the appellate Court.

16. In view of the aforesaid facts and circumstances narrated hereinabove, eviction passed u/s 13(1)(k) of the Bombay Rent Act is required to be confirmed while dismissing this revision as it is totally meritless.

17. In the result, this revision is dismissed with no order as to costs. Rule discharged. Interim relief stands vacated.