
(1998) 04 BOM CK 0016
In the Bombay High Court
Case No : First Appeal No. 655 of 1982

Kumble Achutrao Ramrao (deceased) through LRs.	APPELLANT
Vs	
Shantilal Pranjivandas Dalal (deceased) through LRs.	RESPONDENT

Date of Decision : 03-04-1998

Acts Referred:

Bombay Court Fees Act, 1959 — Section 6
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 6, 9

Citation : (1998) 5 BomCR 686

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Advocate : V.A. Thorat, for the Appellant;

Judgement

A.B. Palkar, J.—This is defendant appeal against a decree passed by the learned Judge, City Civil Court, Bombay in Suit No. 4509 of 1966 on 22-1-1982. The suit was filed in 1966 and issues were framed in 1981. Suit came up for hearing on 22-1-1982. The suit was called out in the morning session but since the defendant and his advocate were absent it was postpone to the afternoon session. Again it was called out in the afternoon session at 4.15 p.m. and that time plaintiff and his advocate were present and defendant and his advocate were absent. The suit being of 1966 and issues were framed and settled in July, 1981 in the presence of both the advocates, and the suit was adjourned from time to time. The learned trial Judge did not think it just and proper to adjourn the suit when the defendant and his advocate were absent. After recording the evidence of the plaintiff and perusing the document and correspondence tendered by the plaintiff in the Court and after hearing the advocate of the plaintiff, the learned trial Judge passed the impugned decree.

2. In this Court, Shri V.A. Thorat represented the appellant (original defendant). The original appellant as well as respondent have, died during pendency of the appeal, and therefore, their heirs have been brought on record. However, none appeared for the respondents even after the service.

3. The plaintiff's case, in brief, is as under:-

That the agreement dated 5th July 1961 executed by the defendant has come to an end on 10th July 1966 and on this basis the plaintiff had filed a suit against the defendant for an order and decree that the defendant, his servants and agent be ordered and decreed to remove themselves from the suit premises of Shantilal & Bros, together with his belongings and to return to the plaintiff all the furniture and fixtures as mentioned in the agreement Exhibit A to the plaint and thereby to deliver vacant and peaceful possession of the suit premises to the plaintiff.

4. The plaintiff was, at all the material times the owner of the business known as Messrs. Shantilal and Brothers situated on the ground floor, of Amar Niwas bearing shop No. 181, New Charni Road, Bombay. He was holding the said shop as a monthly tenant. On 10th July 1961 he entrusted the management and running of the said business Shantilal & Bros, to the defendants for conducting the said business upon certain terms and conditions as set out in the plaint. Under the terms of the agreement the defendant had only to conduct the said business of Shantilal and Brothers for a period of five years. He also agreed to deposit Rs. 10,500/- with the plaintiff by way of security for due performance and observance of the terms and conditions of the said agreement and also for the safe keeping of the furniture and fixture mentioned in the said agreement. The defendant also agreed to pay every month a sum of Rs. 300/- as and by way of royalty and/or compensation. By a letter dated 30-3-1966 addressed by the defendant to the plaintiff informing the plaintiff that the period of agreement was to be extended for further live years and asking for the consent of the plaintiff to the same. Alongwith the said letter the defendant sent a draft agreement for approval of the plaintiff. The plaintiff sent a letter dated 15th April 1966 to the defendant informing him that he was not ready and willing to extend the period of agreement as he wanted to carry on business and returned the draft agreement to the defendant. Thereafter, the defendant sent another letter dated 25th April 1966 contending that under Clause 11 of the said agreement the plaintiff's consent was merely a formality and that the plaintiff was not entitled to withhold the said consent and again sent draft agreement for approval of the plaintiff. In a reply the plaintiff reiterated what he has stated earlier and called upon the defendant to hand over the possession after expiry of agreement period i.e. after 10-7-1966 and would attend the shop on 11-7-1966. However, the defendant sent a letter dated 15-6-1966 and reiterated its earlier contentions, when on 11-7-1966 the plaintiff went to the premises and called upon the defendant to hand over the possession, he refused to oblige and perform the part of the agreement, and therefore, the plaintiff was constrained to file the present suit.

5. The suit was valued for the purposes of Court fees and jurisdiction at 20,000/-. According to the plaintiff Rs. 18,000/- being market value of the said premises and Rs. 2,000/- being the value of the furniture.

6. As I have already pointed out that the suit came up for hearing after about more than a year of framing of the issues. The defendant was absent and so evidence of the plaintiff was recorded and the entire evidence of the plaintiff has gone unchallenged and having been supported by various documents which were referred to earlier, the suit was decreed.

7. In this count Shri V.A. Thorat learned Counsel appearing for the appellants contended that the suit was not properly valued for the purpose of Jurisdiction and it should have been valued at 150 times of monthly licence fee payable. He also relied upon a judgment delivered by Full Bench of this Court reported in Prem Ratan Vohra Vs. Lalitkumar Dayalji Kakhani, . Now on the basis of this judgment the learned Counsel for the appellants has contended that if the valuation of the suit claim at 150 times of monthly licence fee payable, then the suit was not triable by the City Civil Court as at the relevant time the limit in pecuniary jurisdiction of the City Civil Court was Rs. 10,000/- as the suit was filed in 1966. However, judgment delivered by the Full Bench of this Court states that besides the actual valuation of the property on the date of the filing of the suit, the only other mode of determining its market value is on the basis of the income that it fetches. Whether it is the owner-licensor, tenant-licensor, or the ousted licensee who files the suit, what is sought to be recovered by them is the property which is the subject matter of the dispute. To them its worth is the net income it fetches or is capable of fetching or the loss which its deprivation causes. The rough and ready as well as a handy measure to estimate such worth is the compensation that is charged for its occupation and agreed to between the parties minus of course all the outgoings which the licensor has to bear. The rental of the premises-unless nothing more is actually charged, can hardly be a basis for calculating the net income particularly when the agreement stipulates compensation that is recoverable.

8. In this judgment the Full Bench has tried to explain the concept of market value and a reference is made to an earlier Division Bench judgment at page 73. After noting certain conflicting decisions of the Courts the Full Bench observed as follows : "Our answer to the two questions referred to us are, therefore, as follows:

The basis of calculating the market value of the property should be the compensation charged and not the rent of the premises in question. It is the net income which accrues to the licensor calculated in the manner stated hereinabove which should be taken as its unit value and its market value should be arrived at by multiplying it by 12 and 1/2 year purchase or by one hundred and fifty months value.

In view of our aforesaid conclusion the trial Court's order dated October 20, 1983 is hereby set aside and the Court is directed to value the suit premises according to the principles laid down hereinabove.

Reference is answered accordingly.

Rule in Writ Petition No. 89 of 1984 is made absolute accordingly with no order as to costs."

9. Now this clearly shows that as the valuation at market value is not something which is prohibited and there being no material on record, the learned Judge had no reason to come to the conclusion that the market value stated by the plaintiff was incorrect.

10. It was the next contention that the Court not have proceeded in the suit in the absence of defendant and his advocate. I have already pointed out that the issues had already been framed, if the defendant and his advocate were not able to remain present, a request should have been made through somebody to the Court to postpone the matter. No reason is given as to why defendant and his advocate both were not present on that date and the Court waited for both of them. The Court was not, therefore, obliged to adjourn the matter specially when there was no request on behalf of the defendant, either made by his advocate or by any person representing him for grant of the adjournment. The suit was of 1966. It came up for hearing in the year 1982. The learned trial Judge found that it was very old suit on his file, and therefore, he was justified in recording the evidence and disposing of the suit.

11. Now, admittedly, decree has also been executed and defendant was not diligent even in applying for setting aside the ex parte decree immediately or filing appeal and asking for stay for execution of the decree for possession, and so the plaintiff executed the decree.

12. It was then contended that the plaintiff was a tenant, and therefore, this defendant should be held as a sub-tenant and the suit should have been filed in the Court of Small Causes. The case of the plaintiff and the agreement clearly show that it was an agreement for conducting business and as such it was only a licensee. It was an arrangement for the defendant to hold the possession as licensee and on termination of the licence the defendant was liable to be evicted. At the time of filing of the suit i.e. in the year 1966 there was no protection to the licensee as the same was given by amendment in 1973. Therefore, the suit was rightly filed in the City Civil Court.

13. Now this being a licence the present respondents who are the legal heirs of the licensee cannot even otherwise claim the possession as license is a personal agreement with the original licensee to conduct the business, could not devolve on the heirs of the licensee, and therefore, at this stage there is absolutely no reason to interfere with the decree passed by the learned trial judge and appeal must, therefore, fail.

Appeal is dismissed with costs.

14. Appeal allowed.