
(2004) 12 BOM CK 0103
In the Bombay High Court
Case No : First Appeal No. 266 of 1987

Lockwood Industrial and Transport Services, a Registered Partnership Firm APPELLANT

Vs

Victoria Timber Supplying Company, a firm carrying on business as Timber Merchants RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Citation : (2005) 3 BomCR 223

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : D.S. Sawant, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—This First Appeal arises from the judgment and order dated 7th October 1985 passed by the Bombay City Civil Court in Special Civil Suit No. 6405 of 1975 declaring the Respondents-original Defendants as tenants/protected licensees and dismissing the Suit of the Appellants-original Plaintiffs.

2. The Plaintiffs had filed a Suit seeking relief against the Defendants to hand over vacant and peaceful possession of the Plaintiffs' structures. A sum of Rs.8,500/- was sought by way of damages and further an amount of Rs.500/- per month was sought by way of mesne profits from the Defendants for illegal occupation of a structure. Despite these clear prayers indicating that the Plaintiffs sought possession of the premises which the Defendants were illegally occupying, the trial Court was of the view that this was a suit for ejectment and since Defendants were tenants/protected licensees, the suit was dismissed.

3. The short facts involved in the present case are as follows :

On 1st November 1970, the Plaintiffs acquired a plot of land on lease from the Bombay Port Trust. The previous lessee Kothari Saw Mills had put up some structures on this plot of land. The Defendants, it appears, were permitted by

Kothari Saw Mills to occasionally store their excess goods in the suit premises as licensees. After taking over the leasehold land from Kothari Saw Mills, the Defendants were directed to remove their goods from the suit premises and according to the Plaintiffs the license ceased to have effect once the interest of Kothari Saw Mills was terminated. The Defendants refused to vacate the suit structures claiming to be the tenants of Kothari Saw Mills. On 9th May 1971, there was a big fire in the property in which many structures including the part of the suit premises were destroyed. On 23rd May 1971 the Defendants attempted to trespass upon the suit premises despite the Plaintiffs' objection. The Plaintiffs, therefore, filed the present Suit before the Bombay City Civil Court. The Plaintiffs had also taken out a Notice of Motion which was replied by the Defendants. In their affidavit they claimed that they were monthly tenants of Kothari Saw Mills in respect of one room and two other parts of the leasehold premises of the Plaintiffs. An affidavit was filed by the Partner of Kothari Saw Mills clarifying that the Defendants had been occupying the shed on the plot, on leave and license basis. It was also averred that occasionally the Defendants were permitted to store their goods at the convenience of Kothari Saw Mills. The Motion was allowed on 18th June 1971 and the Defendants were restricted from building or reconstructing the premises which had been destroyed in the fire. On 1st November 1972, the Plaintiffs sought to reconstruct the premises by calling upon the Defendants to refrain from storing any timber or other goods in the gutted premises. Another Motion was taken out by the Plaintiffs restraining the Defendants from storing their goods without Municipal permission and from preventing the Plaintiffs from reconstructing the premises. The trial Court issued an interim injunction restraining the Defendants from storing goods in the premises without having a valid Municipal license. However, the prayer for reconstruction was denied. Despite the Plaintiffs' efforts to restrain the Defendants from storing timber in the premises, the Defendants continued to store the goods in the suit premises without having a valid Municipal license. Ultimately, the Plaintiffs filed Suit No. 6405 of 1975 before the City Civil Court at Bombay to recover possession, damages and for certain other reliefs. The Defendants came up with a new story in their Written Statement that Kothari Saw Mills had taken a deposit from them of Rs.6,500/- and had issued a rent receipt to them in 1968. They have also claimed that there was a leave and license agreement between the Plaintiffs and themselves for storing their goods and that by virtue of the amendment to the Bombay Rent Act in 1973, they had become statutory tenants. The Defendants sought to rely on certain receipts issued by Kothari Saw Mills during the period 1966 to 1970 which they claimed were rent receipts.

4. After documentary evidence was led before the trial Court and oral evidence of the witnesses for the Plaintiffs and the Defendants was recorded, the trial Court dismissed the Suit with costs. The trial Court relied upon the receipts and account book entries holding that Kothari Saw Mills had been accepting the rent of Rs.75/-per month from the Defendants. The trial Court also observed that the

Defendants proved that they were protected licensees or tenants of the Plaintiffs in respect of the suit premises. The trial Court held that the Plaintiffs had been unable to prove that the Defendants were trespassers on the suit premises or they were liable to pay Rs.8,500/- to the Plaintiffs or Rs.500/- per month as mesne profits. The trial Court was further of the view that the suit was not barred by the principles of res judicata in view of the withdrawal of the earlier Suit No. 3893 of 1971. Aggrieved by this decision of the trial Court, the Appellants have approached this Court in Appeal.

5. The main contention raised on behalf of the Appellants by Mr. Sawant is that the Bombay City Civil Court had no jurisdiction to decide whether the Defendants were protected licensees or tenants of the Plaintiffs in respect of the suit property. The learned Advocate submits that it is within the exclusive jurisdiction of the Small Cause Court at Bombay to decide as to whether a person is a protected licensee or a tenant under the Bombay Rent Act. The Bombay City Civil Court having no jurisdiction in this respect, he submits that no finding could have been given by the Court much less a finding that the Defendants were protected licensees or tenants of the Plaintiffs. The learned Advocate urges that the Plaintiffs had sued the Defendants claiming that they were trespassers on the property of the Plaintiffs. Therefore, it was only the Bombay City Civil Court which had jurisdiction to entertain and try this Suit. He submits that if at all the trial Court was of the view that the Defendants were not trespassers as claimed by the Plaintiffs, it could have dismissed the Suit by arriving at such a finding. However, it could not have come to the conclusion that the Defendants were protected licensees or tenants of the Plaintiffs. He submits that the concept of a "protected license" and a "tenant" are mutually exclusive and it is only the Rent Court which can decide this issue. According to the learned Advocate, in the earlier Suit filed by the Plaintiffs, the Defendants had claimed that they were tenants of Kothari Saw Mills in respect of the same premises. However, since they were unable to prove by any documentary evidence that they were in fact tenants of Kothari Saw Mills, the Defendants raised a contradictory plea claiming protection of the Rent Act as a protected licensee of the Plaintiffs.

6. On a bare perusal of the impugned judgment, I have no hesitation in accepting the submissions of Mr. Sawant. The Bombay City Civil Court has no jurisdiction to decide whether the relationship between the Plaintiffs and Defendants was one of landlord and tenant or licensor and licensee. The City Civil Court could not decide whether the Defendants were licensees and were entitled to the protection of the Rent Act by virtue of the amendment of 1st February 1973. The Suit itself was filed for possession of the premises, damages and mesne profits. Such a Suit would only require the trial Court to ascertain whether the Defendants are in possession as a trespasser or not. The trial Court had no business to decide that the Defendants were tenants/protected licensees. If the trial Court was of the view that the relationship between the Plaintiffs and the Defendants was not that of a trespasser, the trial Court ought to have returned the Plaint for presenting the same before the proper forum i.e. the Small Causes

Court at Bombay. In fact, the Defendants had raised this objection in the Written Statement by contending that it was only the Small Causes Court which had jurisdiction to try the Suit as the Defendants were protected licensees or tenants of the suit premises.

7. The evidence on record indicates that the Defendants had been given one room in 1971 by Kothari Saw Mills for storage of their materials. The Defendants did not have the exclusive possession of the suit premises but in fact the Kothari Saw Mills also had access to the premises. Once the premises were leased to the Plaintiffs, the leave and license agreement if at all existing between the Defendants and Kothari Saw Mills stood terminated. There is no evidence on record to establish that the Plaintiffs had entered into any agreement with the Defendants in respect of the suit premises. Obviously, therefore, the Defendants continued as trespassers on the suit premises.

8. There are several contradictions in the evidence of the Defendants led before the trial Court. The evidence does not establish that the Defendants were not trespassers. The receipts sought to be relied on by the Defendants were in respect of some other premises and not the suit premises. Admittedly, the amount of Rs.6,500/- was not adjusted to the rent but to the other liabilities incurred by the Defendants qua Kothari Saw Mills. Therefore, the claim made by the Defendants that they were monthly tenants or protected licensees in view of the deposit of Rs.6,500/- is unsustainable. The evidence does not support the case of the Defendants that they were monthly tenants. In fact, the Partner of Kothari Saw Mills had clarified the position that Defendants were only permitted to use the premises as a temporary arrangement as and when they required to store excess goods. The rent receipts do not correspond with the entries in the account books as they are for different amounts. In my view, therefore, the inescapable conclusion is that the Defendants are trespassers on the suit premises. The judgment of the trial Court will have to be set aside and a decree granted in favour of the Plaintiffs.

9. First Appeal Allowed. No order as to costs.

10. Certified copy expedited.