

(1991) 11 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 1760 of 1984

Lt. Col. Clive Everard Ryan Williams (Retd.)

APPELLANT

Vs

Raju B. Kriplani and Another

RESPONDENT

Date of Decision : 29-11-1991

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Easements Act, 1882 — Section 52
Transfer of Property Act, 1882 — Section 105

Citation : (1991) 4 BomCR 32

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : S.K. Vyas and K.P. Jain, for the Appellant; S.R. Chitnis, for the Respondent

Judgement

M.F. Saldanha, J.—At the very outset, it needs to be pointed out that this is an unfortunate litigation which has been forced upon a retired service officer, and the record indicates that prior to the approach to this Court in the year 1984 that he was dragged through certain unnecessary and, to my mind, thoroughly unwarranted proceedings before the Court of Small Causes at Bombay. The mistake committed by the petitioner appears to have been to induct respondent No. 1 into his residential flat No. A/4 situate on the 4th Floor, Dolphin Apartment, Sadashiv Park, Pilot Bunder Road, Bombay 400 005. The petitioner has given his perfectly valid and plausible reason for the paying guest arrangement which he entered into, namely, that he was effectively staying there alone at that time and, therefore, had some spare accommodation. The law certainly entitled him to utilise that accommodation by granting a transitory licence to people who were in need of temporary accommodation. It is under these circumstances that a simple paying guest agreement was entered into on 1-11-1977 with respondent No. 1. I have seen the agreement, which is annexed in the compilation, and, to my mind, there is no ambiguity whatsoever with regard to the intention of the parties that

emerges from this agreement that it was simple paying guest agreement and furthermore, that it was for a very limited duration. The facts are quite explicit and indicate that respondent No. 1 himself construed the agreement as such because there were certain renewals of this agreement in the subsequent years. If the intention of the parties was to create a lease or tenancy, this latter situation would not have been there. Apart from this, it is necessary to take note of the fact that the petitioner himself was residing in the premises which consists of a residential flat. Respondent No. 1 was to occupy two bedrooms as per the arrangement in the agreement and he was permitted the use of certain other areas of the flat, such as the kitchen, the drawing room, etc. This was perhaps understandable because a plan of the flat does indicate that if a person was permitted to reside there as a paying guest that certain use of the other areas with the permission of the petitioner was understandable. There is also a reference in the agreement to the permission granted to the respondent No. 1 for the use of the garage on a temporary basis, but it is qualified by the statement that it was only because the petitioner at that time did not possess a car and, therefore, as a transitory arrangement, respondent No. 1 was permitted to park his car there. Unfortunately, like the proverbial story of the camel and the tent, respondent No. 1 proceeded to the Court of Small Causes at Bombay and filed a suit in the year 1982 contending that the agreement should be construed as a tenancy in his favour and, furthermore, to set up an elaborate case to the effect that the premises had effectively been sub-divided. If one sees the plan of the flat, the reason for the latter contention is perfectly understandable. Respondent No. 1 and whosoever was advising him were obviously aware of the fact that the contention of tenancy would be regarded by the trial Court as an utter absurdity and, consequently, in order to bolster up the false case that was pleaded, a weak attempt was made to allege that the flat had, in fact, been sub-divided and that the petitioner, who is an old man and a retired service officer, is alleged to have brought 14 to 15 persons into the flat and torn down the elaborate wood work that was so put up. For purposes of trying to obtain interim relief, violence was attributed to the present petitioner and on the basis of the averments in the plaint an attempt was made to obtain an injunction against the petitioner effectively restraining him from using his own flat.

2. The record before me annexes all the relevant material, including the pleadings which are rather elaborate. I have carefully gone through every page of this record for purposes of satisfying myself about the true nature of the proceedings and of the reliefs, if any, which the parties should be entitled to. It must be said to the credit of the learned Judge who presided over the trial Court that he very correctly decided that the material placed before him required to be carefully scrutinized before granting any interim relief. The learned Judge has gone through the plaint, the affidavits and the documentary evidence, which includes the report of a Commissioner appointed by the Court. This report, to my mind, is quite eloquent because it completely falsifies every word of what was

alleged against the present petitioner. The trial Court, therefore, came to the conclusion, and very correctly to my mind, that no interim relief was warranted in this case. The trial Court took cognizance of one more important fact, namely, that the present petitioner was the owner of the premises and that he was residing there. The Court examined the documents and came to the conclusion that the plea put forward with regard to the alleged tenancy rights was totally unfounded. It needs to be mentioned here that merely because it has become customary to present a plaint to the Court of Small Causes containing statement, that the document executed should be disregarded that the intention of the parties should be ignored and that the Court should hold that a person to whom transitory rights were afforded and which rights have come to an end should be construed as having the protection of the Bombay Rent Act, that the Court is not obliged to accept any such pleas, particularly if they are unfounded and more so if the pleas appear to have a basis of dishonesty. In the present case, therefore, the interim relief was rightly refused. To my mind, on the material before the trial Court and on the basis of the enquiry conducted by that Court, the learned Judge would have been fully justified in having dismissed the suit at that stage itself. Unfortunately, however, that course was not adopted and respondent No. 1 thereafter carried the matter in appeal.

3. The appeal was vehemently contested and for all intents and purposes, both the parties placed everything that they desired to produce before the Appellate Bench. The appeal was heard and disposed of by the Appellate Bench of the Court of Small Causes by a judgment dated 23-3-1984. The judgment in question significantly enough runs into 33 pages. The Judges have entered into a very elaborate evaluation of the material placed before them, but unfortunately lost sight of the fact that the proceedings were at the ad-interim stage. A reading of that judgment indicates that the two learned Judges have virtually decided the suit in favour of respondent No. 1. The type of reliefs granted are not only strange but are shocking. Respondent No. 1 was granted permission to virtually re-construct the so-called partitions in the premises which, according to the record, could never have existed. The Appeal Court went to the extent of restraining the petitioner, who was the owner of the flat, from the use of a greater part of the premises and virtually confined the petitioner to the entry and exit from only one bed room. The order in question, to my mind, apart from being wholly without jurisdiction and wholly misconceived, is a thoroughly unsatisfactory order and I am constrained to observe that it is not above suspicion.

4. The petitioner was, therefore, required to approach this Court once again and as is apparent from the order passed at the admission stage, Sawant J., (as he then was), after hearing the parties and going through the record, came to the prima facie conclusion that the Appellate Order deserved interference with and, furthermore, that as an interim arrangement, the petitioner should not be debarred from the beneficial use of the requisite areas in his own flat. I need to further point out that after hearing the parties, it was quite obvious to Sawant,

J., that the suit itself was devoid of substance and it is for this reason that even though the order was passed on 24-4-1984, the Court of Small Causes was directed to peremptorily dispose of the suit by 30th September 1984. I am informed at the Bar that the suit has been disposed of by the trial Court and that the matter is now pending before the Appellate Bench and the appeal is set down for hearing on 13-1-1992.

5. I have heard learned Counsel on behalf of the petitioner. Respondent No. 1 was originally represented by Mr. Mirchandani who thereafter sought the leave of this Court to withdraw his appearance and respondent No. 1 changed his learned Counsel thereafter. As indicated by me earlier, I have very carefully perused the record placed before me, among other things, for the purpose of finding out whether there was any justification for the type of order passed by the Appellate Bench of the Court of Small Causes. The Appellate Bench has examined the matter threadbare and has come to the conclusion that respondent No. 1 was entitled to interim reliefs. In so doing, the agreement, the report of the Commissioner, the affidavits and whatever other material the parties desired to rely on in support of their respective cases have been carefully evaluated. None of the conclusions that have been recorded are capable of being either upheld or sustained. There is no justification, to my mind, for the interference by the Appellate Bench with the order passed by the trial Court. The reasoning which was to the effect that the trial Court ought not to have gone into a prima facie, examination of the question as to whether the present respondent No. 1 who was the plaintiff before the trial Court appeared to have a semblance of a case of tenancy is also totally unjustified. It is never the function of the trial Court to accept statements contained in the pleadings at their face value and thereby to give a go by to agreements and arrangements that are reflected in documents. It was therefore a welcome departure from the normal practice that the trial Court examined the merits of the matter before deciding the grant of any interim reliefs. Obviously, the learned Judge, who presided over the trial Court, was conscious of the fact that if interim reliefs were to be granted against the owner of the premises, merely because a party desires to litigate and continue in wrongful possession of the premises on the basis of such vexatious and frivolous litigation, that a Court should not uphold pleas of such a type. The Appellate Bench, therefore, was clearly in error in having observed that the approach of the trial Court was faulty.

6. Having held that the agreement entered into between the parties, which is before me and which agreement has been renewed from time to time without any appreciable difference, could not and cannot under any circumstances have conferred any tenancy rights on respondent No. 1, it necessarily follows that respondent No. 1 was not entitled to any interim relief of any type. Under these circumstances, it would be necessary for me to set aside the order passed by the Appellate Bench of the Court of Small Causes and, pending the disposal of the appeal, to vary the interim orders passed by this Court at the stage of admission. It is directed, in the first instance, that the petitioner, who is the rightful owner of

the garage and who claims that he owns a car and who desires to use the garage for his own use, shall not be obstructed in any manner from the use and occupation of that garage. The Society shall be at liberty to take all necessary steps against respondent No. 1, even to the extent of prohibiting him from bringing his car into the premises if he obstructs the petitioner's use of the garage in question. Furthermore, it is clarified that until the disposal of the appeal before the Appeal Court, the petitioner shall be at full liberty to the use of all the areas of the disputed premises save and except the two bed rooms that are supposed to be occupied by respondent No. 1. Respondent No. 1 shall not obstruct the petitioner in the beneficial use and enjoyment of these areas and until the disposal of the appeal, respondent No. 1 shall not be prevented from passing through these areas or utilising the same provided he does not interfere with the beneficial use and occupation of respondent No. 1 whatsoever.

7. It is pointed out by learned Counsel appearing on behalf of the petitioner that due to the situation prevailing in the Court of Small Causes that the appeals placed before the present Appellate Bench are not being heard. The Chief Judge of the Court of Small Causes at Bombay shall, therefore, transfer the pending appeal to any of the other Appellate Benches with a specific direction that the appeal shall be heard and disposed of before 31-3-1992.

8. Before parting with the present proceedings, it is necessary for me to observe that the petitioner in the present case is a retired service officer. The law has made a special provision for the recovery of premises belonging to persons of this category u/s 13-A-1 of the Bombay Rent Act, and this Court as also the Supreme Court have had occasion to observe that neither the time factor nor for that matter any other factor should come in the way of persons belonging to this category in the matter of recovery of the premises which they need to occupy. This is an aspect which essentially needs to be given paramount consideration by courts handling these cases. Whereas generally there exist provisions in the Rent Act that are slanted in favour of the occupant and the courts are required to accordingly enforce those sections with a degree of sympathy, as far as service personnel are concerned, the law has made a reverse provision specifically for purposes of ensuring that no frivolous or dishonest pleas or no time-consuming litigation should come in the way of recovery of possession when they require the premises. It is advisable that the courts dealing with the cases of this type take special note of these factors. The present proceeding is a classic instance of how a retired service officer is being made to run in circles and deprived of the use of his own premises on all sorts of frivolous grounds. If the law is to be meaningfully applied, it would be essential that the trial courts take note of the fact that retired service personnel have been held to be persons belonging to a separate category of persons for whom special provisions have been enacted and that nothing should be permitted to come in the way of the enforcement of those provisions.

9. Learned Counsel for the petitioner has made a grievance of the fact that

respondent No. 1 has been depositing in Court an amount of Rs. 1,500/- per month instead of the agreed amount of Rs. 1,800/- per month. There is no order on record on the basis of which the compensation payable under the original agreement stands reduced. Under these circumstances, respondent No. 1 is directed to deposit the entire balance of the arrears of Rs. 300/- per month upto and inclusive of the month of December 1991 in the Court of Small Causes as a condition precedent before the hearing of the appeal by of Court. The petitioner shall be at liberty to withdraw the amount so deposited.

10. In the result, the rule is made absolute. The judgment and order dated 23-3-1984 is set aside. Respondent No. 1 shall pay to the petitioner the costs of this proceeding quantified at Rs. 5,000/-.