
(1999) 12 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 3168 of 1989 (A) and W.P. No. 3171 of 1982 (B)

Manilal Chunilal Shah since deceased through his L.Rs.

APPELLANT

Vs

Shantilal Rupchand (Golecha) Marwadi

RESPONDENT

Date of Decision : 04-12-1999

Acts Referred:

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

Constitution of India, 1950 — Article 227

Transfer of Property Act, 1882 — Section 108

Citation : (2000) 4 BomCR 133 : (2000) 2 MhLj 478

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : K.S. Bhore and V.D. Hon, for the Appellant; C.V. Korhalkar, for the Respondent

Judgement

B.H. Marlapalle, J.—The plaintiff-landlord has brought in question the judgment and order dated 15.2.1982 by the Extra Assistant Judge, Ahmednagar in Regular Civil Appeal No. 366/80. The facts in brief are stated as under :-

2. The landlord by way of an oral lease gave the suit premises on rent to the defendant and the monthly rent was fixed at Rs. 16/-. The suit premises is a shop located on the ground floor of building bearing C.T.S. No. 1189 to 1194 at Kopargaon. It is contented by the landlord that the suit premises were given on rent for the purpose of carrying on business of running a grocery shop. It appears that some times in 1972 or so the defendant was allotted another shop (Gala No. 3) in the shopping complex constructed by the Municipal Council, just opposite the suit premises and he obtained a licence to carry out business of running a grocery shop in the new premises. The landlord instituted R.C.S. No. 756/75 seeking the eviction of the tenant on the grounds that:

(a) the premises were required for bona fide use of the landlord,

(b) the tenant had changed the use of the premises and

(c) he had got alternate accommodation.

The suit was opposed by the tenant by filing a written statement and after appreciating the oral and documentary evidence the learned Judge of the trial Court decreed the suit on 30.8.1980.

3. The tenant therefore, challenged the said decree in Regular Appeal No, 366/80 and the lower Appellate Court allowed the appeal partly by setting aside the eviction decree. The lower Appellate Court held that provisions of section 13(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act for short) were not applicable to the business premises and these provisions were applicable only to the residential premises. The lower Appellate Court proceeded on the presumption that there was no case made out for eviction u/s 13(1)(k) of the Bombay Rent Act and the case was made out for eviction on the grounds u/s 108(o) of the Transfer of Property Act, inasmuch as the suit premises were not being used for the purpose they were taken on rent. On the issue of bona fide requirement the lower Appellate Court negated the contentions of the plaintiff.

4. It was the case of the plaintiff that he was residing with his family members on the first floor of the building in which the suit shop is located and he was required to come for toilet on the ground floor and therefore, it was necessary that he shifted on the ground floor for his residential purposes. The plaintiff further contended that after the defendant was allotted shop by the Municipal Council, he was using the suit shop only as a godown and therefore, there was change in use of the suit premises. Both in the plaint as well as in his oral depositions the plaintiff contended that the suit shop was given on rent for business purposes (for running a shop) and the defendant had stopped using the suit premises for the said purpose and was using the premises as a godown which use had caused injury to the plaintiff inasmuch as the premises were damaged. In addition to the plaintiff himself, other witnesses have been examined in support of his case. Shri Salunke, Supervisor from the Market Committee (Exh. 73) and Shri Dhumal, clerk from the Municipal Council (Exh. 74) were examined and it is proved that the defendant came to be allotted shop No. 3 in the Commercial complex constructed by the Municipal Council and he has been carrying out the business of selling groceries from the said premises.

5. So far as the question regarding bona fide requirement is concerned, it has been rightly given up as the plaintiff, during the pendency of this petition, died. The learned Judge of the lower Appellate Court has rightly held that the provisions of section 13(1)(1) of the Bombay Rent Act, are not applicable to premises other than residential premises and the said finding does not call for any interference. The only question that is required to be considered in this petition is whether there was a case made out for eviction u/s 13(1)(k) or section 13(1)(a) of the Bombay Rent Act read with section 108(o) of the Transfer of Property Act.

6. The learned Counsel for the petitioner in support of his contentions relied upon a judgement of this Court in the case of Canara Bank Vs. Yusuf Abdulhussein Arsiwala (deceased by LRs) and Others, . In that case the suit premises were let out to the bank for office purposes and it appears that the bank was carrying on the activities of banking and the bank was shifted to some other premises. The suit premises were being used subsequently as a godown. In evidence it was observed that the petitioner had stopped doing banking business in the suit premises and the suit premises were being used as a godown. This Court therefore, held that it amounted to change of user and it was against the terms of agreement. It is clear that there was a written agreement between the parties and the use of the premises was specifically reduced into writing in the said agreement. Running a branch by the bank in the suit premises is certainly different from using the premises as a godown. The law laid down by this Court in the said case does not apply to the instant case for the following reasons.

The case of the plaintiff has been right from the beginning that the suit shop was given on rent for business purposes and the defendant was carrying out the business of sale of groceries. There is no dispute that after he was allotted another shop in the complex constructed by the Municipal Council, just opposite the suit premises the defendant started storing the excess stock in the suit premises and sale of groceries was being carried out from the new shop. The suit premises continued to be used for the purpose related to his business of running a grocery shop and it could not be said that there was a change of user. In fact, it appears from the averments made in the plaint as well as the evidence, the plaintiff was aware that the excess stock of groceries are stored in the suit premises and the suit premises are not locked. Even if it is proved that there was no electricity connection in the suit premises right from 1979 it would not itself go to show that there was change of user. In the case of Jnan Ranjan Sen Gupta and Others Vs. Arun Kumar Bose, the Supreme Court considered a similar case wherein, the premises were leased out for occupying of lorries as a garage and subsequently some structure was constructed on the said land for the purpose of workshop for maintenance of lorries. The Apex Court held that it could not be said to be for the purpose other than that of the lease so as to attract the inhibition of section 108(o) of the Transfer of Property Act. In the case of Smt. D. Malini v. S.A. Kucheria 1987 Bom RC 22, the tenant was originally carrying out the business of residential hotel in the leased premises and the said business was closed. The tenant started carrying on the business of a lodging house. This Court held that it was neither a case of non-user nor a case of change of user. In the facts of the case at hand, the suit premises are still being used for business purposes though, may not be for carrying actual sale of grocery from the premises but the excess stock of the grocery are stored and therefore, it cannot be said that there is a change of user or inhibition of section 108(o) of the Transfer of Property Act is attracted in the instant case.

7. The lower Appellate Court has rightly interfered with the decree passed by the trial Court and the evidence on record does not vitiate the findings of the lower

Appellate Court on the main ground of change of user. The challenge to the order passed by the lower Appellate Court is therefore, devoid of merits and no interference is called for in the said order by this Court under its supervisory jurisdiction under Article 227 of the Constitution of India.

8. In the result, the writ petition is dismissed. Rule discharged with no order as to costs.

9. Petition dismissed.