
(1919) 01 BOM CK 0018
In the Bombay High Court
Case No : O.C.J. Appeal No. 14 of 1918

Morarji Gokuldas and Co.

APPELLANT

Vs

The Asian Commercial Assurance Co. Ltd.

RESPONDENT

Date of Decision : 09-01-1919

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 2(c)

Citation : AIR 1919 Bom 145 : (1919) 21 BOMLR 397 : 51 Ind. Cas. 293

Hon'ble Judges : Hayward, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, C.J.—As a result of negotiations which commenced in December 1917 the plaintiffs took a lease from Sir Mahomed Yusuf of his premises in Church Gate Street consisting of a four-storied house, on the 6th of February 1918.

2. By the lease the plaintiffs became entitled to the premises for twenty years, at a rent of Rs. 6,500 per annum for the first ten years and Rs. 7,000 for the second ten years with an option of renewal for another seven years at the same rent and by the lease they acquired the benefit of all subsisting tenancies,

3. Their object in taking the house was to utilize the fourth floor as an office for their firm. At the date of the lease it was held by the defendants on a monthly tenancy and the plaintiffs arranged with Sir Mahomed Yusuf to give notice to quit on the 31st March to the defendants as the plaintiffs' tenure was to commence on the 1st of April.

4. Accordingly such notice to quit was given to the defendants on the 18th of February.

5. They did not, however, quit at the commencement of the plaintiffs' tenure. Therefore they were not in lawful occupation of the fourth floor. They were trespassers. On the 10th of April the Bombay Rent Act (II of 1918) came into force and on the same day the plaintiffs filed this suit for possession of the fourth

floor. The defendants contend that under the Rent Act they cannot be ejected. They rely upon Section 9 which so far as material is as follows :--

No order for the recovery of possession of any premises shall be made so long as the tenant, pays or is ready and willing to pay rent to the full extent allowable by this Act and performs the conditions of the tenancy : Provided that nothing in this section shall apply...where the premises are reasonably and bona fide required by the landlord either for the erection of buildings or for his own occupation...

6. The plaintiffs reply that the premises are reasonably required by them for their own occupation.

7. The learned Judge, after a consideration of the evidence adduced by the plaintiffs, held that it would be unwarrantable to throw the slightest suspicion upon the honesty of their motives in taking the lease of the 6th February by which I understand him to mean that although they had not made out a very strong case of inconvenience in their former premises they did bona fide require the fourth floor for their own occupation. It seems to me that on this point there can hardly be two opinions. The plaintiffs are paying to their lessor for a long term a rent much higher than that he was already receiving and this coupled with their evidence as to the inadequacy of their present office accommodation convinces me that they reasonably and bona fide require the fourth floor for their own occupation. It is indisputable that the plaintiffs fall within the terms of the definition of "landlord" in the Rent Act, Section 2 (c) for they are the persons entitled to recover rent for the premises. The learned Judge, however, held that their lessor did not require to occupy the premises and therefore could not by assigning a reversion to the fourth floor confer the right to claim to occupy that portion of the house.

8. Whether that argument would be tenable if the landlord had assigned his reversion after the Act came into force is a question which does not arise in this case for the landlord had parted with his rights for twenty years and the defendant's tenancy had determined before the Act came into force and I find it impossible to hold that the Act has any retrospective force in limiting the operation of prior transfers. The plaintiffs were the "landlords" when the Act came into force and I cannot find in Section 9 or in any other part of the Act anything to prevent them from exercising the rights reserved to landlords by Section 9 (2).

9. The defendants, besides relying on the provisions of the Bent Act, contend in their written statement that they are entitled to specific performance of a lease of the fourth floor from Sir Mahomed Yusuf for five years. Their evidence, however, negatives any such claim. It shows that they had a lease prepared and stamped to take the fourth floor from Sir Mahomed Yusuf in November 1917 for five years at 200 per month but owing to some conversations with Sir Mahomed Yusuf s agent they abandoned the idea of a lease and agreed to pay Rs. 175 per

month on the understanding that they would not be evicted. Assuming the story of the promise or understanding that there would be no eviction is true it cannot prejudice the plaintiffs who admittedly had no notice of any such understanding. The defendants may have some right of action against Sir Mahomed Yusuf but they have no defense to the plaintiff's claim for possession under his registered lease.

10. A further point was made that the plaintiffs were not entitled to sue as the firm of Morarji Gokuldaa & Co. includes Sir Rinsha Wachha who is not a party-plaintiff. That gentleman has deposed that though a partner he has no interest in the financial side of the firm or in the lease in question. He is indeed a salaried partner only not interested in the assets and therefore not a necessary party to a suit such as this. We set aside the decree of the lower Court and pass a decree for the plaintiffs for possession as prayed--Rs. 165 p. m. from 1st April 1918 till delivery of possession as compensation for use and occupation--with costs throughout on the defendant.