
(2004) 12 GUJ CK 0009
In the Gujarat High Court
Case No : Civil Revision Application No. 37 of 1989

N.L. Patel

APPELLANT

Vs

Sadashiv Vishvanath

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(L), 29

Citation : (2004) 12 GUJ CK 0009

Hon'ble Judges : J.N. Bhatt, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : J.D. Ajmera, for the Appellant; Uday R. Bhatt, for the Respondent

Judgement

J.N. Bhatt, J.—Pursuant to the order recorded by learned Single Judge in Civil Revision Application No. 37 of 1989 on 16/1/1989, the Reference to the Division Bench was desired and, therefore, this matter is placed before this Division Bench for consideration of the Reference.

2. With a view to appreciate and evaluate the main issue in focus, by virtue of the Reference arising out of the observations of the Learned Single Judge, let there be a concise spectrum of facts and relevant law, at this juncture.

3. The opponent, in this Revision Application u/s 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, ("ACT"), filed a suit for vacation, contending that the petitioner, herein-original defendant-tenant, is liable to vacate the residential demised premises and he is entitled to seek possession of the demised premises, in view of the provisions of Section 13(1)(L) of the Act. However, upon examination and appreciation of facts and evidence, the learned Trial Court Judge held, against the landlord and in favour of the tenant observing, that the tenant had not acquired suitable residential accommodation as mandated in Section 13(1)(L) of the Act. Consequently, suit for possession came to be dismissed by a judgment dated 1/8/1983, which came to be challenged in a Civil Appeal No. 347/83 before the District Court at Vadodara, by

the landlord.

4. In Appeal, the learned District Judge upon consideration of the facts and the relevant law, reversed the judgment and decree with regard to the relevant possession, by judgment dated 29/10/1988. Thus, appeal initiated at the instance of landlord, came to be allowed, interalia, observing that, the learned Trial Court Judge failed to appreciate fact situation and the evidence before the Trial Court. It was also observed that, the finding of the Trial Court that, the cause of action for the breach of the provisions of Section 13(1)(L) of the Act must exist on the date of filing of the suit, is erroneous and not legal. It was also observed, in the judgment, that the Trial Court was required to consider the merits of the suit for eviction, on the ground of Section 13(1)(L), as to whether the cause of action for the breach of Section 13(1)(L) had arisen or not and the case has to be considered on merit and evaluated irrespective of the fact, as to whether on the date of the filing of the suit, the tenant has been in actual possession of such other premises or not. Even at the time of notice, the tenant was found in actual occupation of three rooms acquired. In short, the proposition that the cause of action for the recovery of the possession of the demised property u/s 13(1)(L) of the Act, it does not make it incumbent upon the landlord to show that the said cause continued to exist even on the date of filing of suit, in otherwords the possession for acquisition of suitable alternative accommodation or allotment of premise continued in full or part till finality of legal battle.

5. Being aggrieved by the judgment of the Appellate Court, the original defendant-respondent in the appeal before the District Court invoking the revisional jurisdiction of the High Court, preferred aforesaid Civil Revision Application challenging the judgment and decree passed against the tenant by the Appellate Court.

6. In course of the hearing of the said Revision Application, the learned Single Judge passed the following order on 16/01/1989:

"Rule. In view of the decision of the Division Bench of this High Court in the case of Shivalal Natharam Vaishnav v. Harshadrai Haribhai Oza and Ors. Reported in G.L.R. page 99, the matter is required to be admitted. It is difficult to agree with the view that after building, acquiring or having been allotted suitable residence, the tenant can part with the possession or has been allotted a suitable residence, but since he has parted with the possession before the date of filing of the suit, he is entitled to the protection of the Rent Act. Prima facie reading of the decision of the Division Bench, at any rate requires to be explained if not reconsidered. In this view of the matter, it would be proper to refer the matter to Division Bench. Petitioner is directed to complete the office formalities latest before January 27, 1989. Ad-interim relief as regards execution of decree qua possession only on usual terms."

7. Pursuant to the said order of the learned Single Judge, the Hon'ble Chief Justice passed the order to place the matter before the Division Bench and that

is how this matter has come up before us.

8. In course of the hearing before us, a Reference to the decision of the Division Bench of this Court in "Shivlal Natharam Vaishnav v. Harshadrai Haribhai Oza and Ors.," came to be made as the Learned Single Judge has felt, in the order dated 16/1/1989 that it is difficult to agree with a view that after building acquiring for having been allotted suitable residence, the tenant can part with the possession or has been allotted a suitable residence, but since he has parted with the possession before the date of filing that suit, he is entitled to the protection of the Rent Act, and landlord is not entitled to recover the possession of the demised premises, as highlighted and voiced in the decision of the Division Bench in "Shivlal Natharam Vaishnav"s case (supra)". It is in this context, the learned Single Judge has expressed the view to refer the matter to the Division Bench for explanation or for reconsideration, and pursuant to that reference order rendered in this revision by the Learned Single Judge on 16/1/1989, Hon"ble Chief Justice of this Court has passed the order to place the matter before this Division Bench.

9. We heard the learned Advocate Mr.Ajmera dispassionately. We have examined the entire record, threadbare and evaluated the evidence for the purpose of the consideration as to whether the legal exposition or ratio propounded in "Shivlal Natharam Vaishnav"s case (Supra)" expressed by the Division Bench requires reconsideration or not.

10. Section 13(1)(L) of the Act, provides ground for ejectment and entitlement for recovery of the possession to the landlord in the event of the tenant having built, allotted or has acquired vacant possession of suitable residence. The Division Bench of this Court in "Shivlal Natharam Vaishnav"s (supra)" has taken a view that the landlord may successfully, claim a decree ejectment or possession of the demised property u/s 13(1)(L) of the Act, provided that a tenant has acquired or being allotted a suitable residence and that the acquisition or allotment of suitable residence continued in existence till the date of filing of the suit. It is, therefore, very clear that the view propounded in the said Division Bench is that for enforcing the statutory right for recovery of the possession of the demised premises on the ground of Section 13(1)(L) of the Act and passing of ejectment decree against the tenant, the existence of cause of action of having built, acquired or allotment of suitable residence to a tenant, in terms of the provisions of Section 13(1)(L), must continue till the date of filing of the suit.

11. After having taken into consideration the design and desideratum of the provisions of Section 13(1)(L) of the Act, the decision of the Hon"ble Apex Court, the text and the tenor of the legislative provisions of Section 13(1)(L) and the intendment in legislating such ground as one of the grounds of recovery of the demised premises in favour of the landlord against the tenant, we are of the opinion that the view expressed and propounded by this Court in the said Division Bench decision i.e "Shivlal Naharam Vaishnav"s case (supra)" requires

serious further reconsideration as the interpretation made in the same decision is not at all free from doubt.

12. Our prima-facie view that the exposition of the proposition of law in the light of Section 13(1)(L) of the Act, that the continuous of the cause of action u/s 13(1)(L) of the Act must exist even on the date of filing of the suit does not seem to be correct and require reconsideration after consideration of the proposition of the law laid down in the following decisions:

(1) Decision of the Honble Apex Court in Madhukar Ambadas Petkar v. Dwarkanath Sakharchand Gujarat and Anr. .

(2) The decision of the Hon"ble Apex Court in Dewan Chand Bhalla v. Dr.Ashok Kumar Bhoil (1994) 5 SCC 444.

(3) Raghunathi and another Vs. Raju Ramappa Shetty,

(4) Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others,

13. After considering the nature of reference and the order pursuant to which the reference has been made to this Division Bench, prima-facie we are of the clear opinion that, the view expressed by the Division Bench in Shivlal Natharam Vaishnav"s case (supra), by the Gujarat High Court is doubtful and in the light of subsequent decisions of the Hon"ble Apex Court, the view taken in that decision is eclipsed. Since it is a settled principle and proposition of law that, a Coordinate Bench cannot take a contrary view, even if the contrary view is prima-facie expressed and the matter requires consideration by the Larger Bench, bearing in mind the celebrated principle in this regard and, again, placing reliance on a Constitutional Bench decision of the Hon"ble Supreme Court rendered in " Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., in our opinion, for the reconsideration of the decision of the Division Bench, a Larger Bench is required to be constituted. Therefore, office is directed to place the papers before the Hon"ble Chief Justice for the purpose of consideration of the Larger Bench (more than Two Judges Bench) for the purpose of reconsideration of the view and the juristic conclusion reached by this Court in a Division Bench judgment in "Shivlal Natharam Vaishnav"s case (supra)". Reference, shall stand disposed of, accordingly, as answered above.