

(1965) 09 BOM CK 0018
In the Bombay High Court
Case No : C.R. Application No. 1057 of 1964

P.K. Deshmukh

APPELLANT

Vs

Sudhabai

RESPONDENT

Date of Decision : 22-09-1965

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29, 30, 39, 42

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1966) MhLj 690

Hon'ble Judges : D.V. Patel, J

Bench : Single Bench

Advocate : R.W. Adik, for the Appellant; M.V. Sali and A.H. Shah, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Patel, J.—The respondent runs a lodging house in a building known as Parsi Bungalow at Mankhurd, which she occupied as a tenant. The name of the lodging house is "Rajvilas Hindu Lodgo". The petitioner occupied since April 10, 1959, room No. 2, as a lodger, agreeing to pay Rs. 25 per month as lodging charges. According to the contention of the plaintiff no one was allowed to cook anything in the room. The petitioner brought his family members and started cooking. The plaintiff protested against this conduct. She also alleged that the petitioner was irregular in payment of lodging charges. She made an application to the Controller under s. 39 for a certificate for evicting the petitioner. This certificate was granted to the opponent on October 21, 1963, The respondent then filed the suit, being E. A. E. Suit No. 5382 of 1963 in the Small Causes Court at Bombay for evicting the petitioner. The petitioner contended that he had contended before the Controller that he was a sub-tenant in the suit premises and was paying Rs. 25 per month for the room in his occupation. This contention was negatived by the learned Judge and a decree was passed against the petitioner under s. 39 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act,

1947. The petitioner went in appeal to the Bench of Judges under s. 29 of the Act. This appeal was dismissed under O. XLI, r. 11 of the Civil Procedure Code. The petitioner seeks to revise this order.

2. Mr. Adik has raised four points before me. They are: (i) That the appellate Court has not given any reasons for the dismissal of the appeal summarily, which under O. XLI, r. 11, it is necessary to give and I should set aside the said order and direct the learned Judge to re-hear the matter and re-write the judgment; (ii) That against the certificate granted by the Controller he had filed an appeal to the State Government under s. 42, which was not heard until September 1, 1965; the plaintiff's suit was, therefore, premature and no decree could possibly be passed in such a suit; (iii) The question whether the petitioner was a sub-tenant in the suit premises or a lodger, had to be determined by the Court, but inasmuch as the Court has relied upon the certificate of the Controller the decision of the Court is vitiated and is not binding on this petitioner; and (iv) That the petitioner was not a lodger as he had not signed the necessary form of declaration and rules furnished by the plaintiff-opponent.

3. In support of the first contention Mr. Adik relies upon the decision in *Gangahai v. Gourishankar* 1965 Mh. L. J. 408 : (1964) 67 Bom. L.R. 231 where we have held that

The Court hearing an appeal under s. 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, must follow the rule of practice framed by the High Court under Civil Circular 51 of 1890, and therefore, while summarily rejecting the appeal under O. XLI, r. 11 of the Civil Procedure Code, 1908, must give reasons in short for rejecting it.

That does not, however mean that the discretion of the High Court which it has got whether to interfere under s. 115 of the CPC or otherwise under its revisional powers is taken away and the High Court is bound to interfere in every case. The words in the relevant section being the "High Court may". See cases cited in Sir Dinshaw Mulla's Civil Procedure Code, Vol. I., p. 490. In *Shiva Nathaji v. Joma Kashinath* I.L.R., (1883) Bom. 341 (F.B.) this Court amongst other things while considering the ambit of s. 115 said (p. 342):

The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretionary, and subject to considerations of the importance of the particular case, or of the principle involved in it, of delay on the part of an applicant, and of his merits with respect to the case in which the interference of the Court is sought. Should other special causes appear for or against the Court's intervention, due weight is to be given to them, regard being always had to the principles already enunciated.

4. In the case above cited we no doubt set aside the decision of the appellate Court and remitted the matter to it. I am told by the learned counsel that following that judgment very often this Court is persuaded to set aside the order of the lower Court. Cases and cases differ and in some cases merely because no

reasons are given for dismissal of an appeal, it does not necessarily mean that the High Court cannot look at the judgment of the trial Court and consider whether or not it was a proper case where the decree should have been confirmed by the lower appellate Court. We did not intend to hold that the High Court was bound to interfere in all such cases. In fact in another matter which came practically immediately thereafter we refused to interfere in our revisional jurisdiction, though no reasons were given for summary dismissal of the appeal. (See our judgment in *Udharam Ramchand v. Dorab E. Cooper*. (1964) Civil Revision Application No. 3 of 1963 decided by Patel and Tulzapurkar JJ , on November 27, 1964 (Unrep.)) In that case the matter was very simple and the judgment of the trial Court was rightly confirmed by the learned Judges in appeal.

5. In the present case the issue before the learned Judge was very simple and it was whether the petitioner was a lodger or not. The learned Judge has given as many as five reasons for holding that he was a lodger. It is also significant to note that when the defendant gave evidence he did not even say that he was a sub-tenant. It is true as pointed out by Mr. Adik that the defendant had not signed the declaration, which is usually required to be signed by every lodger and which is signed by other lodgers. However, the learned Judge has accepted the explanation of the plaintiff, that, the petitioner promised to sign it when he went into the room but thereafter refused to sign it. The petitioner cannot be allowed to take advantage of his refusal to sign the said declaration. In my view merely because the learned appellate Judges have not given reasons I am not required to set aside the order made in appeal.

6. It is then contended that during the pendency of the appeal before the Government the suit was premature. Section 30 of the Rent Act requires the Manager of the Hotel or the owner of the Lodging HOUSE to obtain a certificate from the Controller certifying that. .. Once a certificate is issued the owner of the Hotel or the Lodging House is entitled to file the suit. No doubt by s. 42 an appeal is provided to the State Government. But, the section does not provide that during the pendency of the appeal the certificate issued by the Controller will be ineffective and the owner of the Hotel or the Lodging House would not be entitled to take action on that certificate. Injustice caused by the delay can well be seen in a case like this. As early as October 21, 1963, the respondent succeeded in obtaining the necessary certificate from the Controller, and the appeal was not decided for two years. It is hardly likely that the Legislature could intend that the owner of a Hotel or a Lodging House should have to undergo double hardship of facing litigations from one place to another before he obtains possession from such persons. In my view, therefore, it is impossible to hold that the suit is premature.

7. It is then contended that it is for the Court to decide the issue whether or not the petitioner was a sub-tenant and it could not place reliance upon the certificate of the Controller. I have read the judgment of the learned trial Judge and I find that the learned Judge has arrived at his own independent conclusion

based on five uncontroversial facts that the petitioner was merely a lodger. He merely referred to the Certificate of the Controller in passing and observed : " Even apart from his findings I have no doubt that the defendant is occupying the suit premises as a lodger. " In my view, therefore, there is no substance in this contention also. I have already dealt with the contention that the declaration was not signed by the petitioner. That, as I have stated above, does not make any substantial difference in the findings made by the learned Judge below.

8. Mr. Adik then contends that in any event there will be some embarrassment if the petitioner chooses to file writ petition against the decision of the Government refusing to interfere with the order of the Controller and if that writ petition is allowed. This contention proceeds on the footing that in a writ petition merely because some irregularity is pointed out, if at all it exists, the Court is bound to issue a writ. The High Court is not bound to issue writ if the ends of justice do not demand it. In my view there is no substance in this contention.

9. In the result the revisional application is dismissed and the rule is discharged. The petitioner to pay costs of the respondent.