

(1980) 10 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 292 of 1975

Priamvada Devi Pramodkumar Pande	APPELLANT
Vs	
Hiralal Kalicharan Yadav and another	RESPONDENT

Date of Decision : 09-10-1980

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1982) MhLj 59

Hon'ble Judges : D.B. Deshpande, J

Bench : Single Bench

Advocate : B.A. Udhoji, for the Appellant; V.A. Masodkar, for the Respondent

Final Decision : Allowed

Judgement

D.B. Deshpande, J.—The landlady, who succeeded in the Court of the Rent Controller, but lost in the appellate Court and before the Reviewing Authority, has come to this Court by way of writ petition, and this writ petition arises out of the following facts:

2. The landlady is the owner of a building wherein four different apartments are situate. Respondent No. 1 Hiralal was admittedly a tenant in one of these apartments and respondent No. 2 Pratapsing is admittedly a tenant in the apartment which is adjacent to the apartment rented out to respondent No. 1 Hiralal. Hiralal had agreed to pay rent at the rate of Rs. 40 per month and he is tenant since 1963. The landlady alleged that Hiralal had taken the apartment for running a photo studio called "Sarita Photo Studio". The month of tenancy commenced on the 6th of English Calendar month and it is not disputed that on 21-12-1968 the month of tenancy was changed from 6th to 1st since January, 1969. The landlady alleged that the tenant Hiralal did not pay rent for a period from 1-6-1970 to 31-7-1971. She alleged further that Hiralal was a defaulter and for this purpose she annexed a schedule to her application. She alleged also that on or about 18-6-1971, Hiralal closed his business of photo studio and after removing almost all his photo equipments etc. sublet the premises to respondent

No. 2 without her consent and without any written permission from her. She, therefore, alleged that the tenant Hiralal contravened the provisions of clause 12-A of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as the Rent Control Order). She also alleged that at the time when the application was presented, the premises were being used for a purpose other than that for which it was let out to tenant Hiralal and she made a positive allegation that the welding and repair job was being carried on there and that it was a hard hitting job and as such causing waste and was likely to impair the value and utility of the premises. She therefore, prayed that permission to terminate the tenancy under clause 13 (3) (i) (ii) (iii) and (iv) of the Rent Control Order.

3. By a common written statement, both the respondents resisted the claim of the landlady. The tenant denied that these premises were taken on rent for a specific purpose of opening a photo studio, as alleged by the landlady. They denied that they were habitual defaulters and, according to them, although the rent was paid to the landlady, receipts were not passed regularly and, therefore, the schedule which is prepared on the basis of these receipts, should not be relied upon. They contended that the tenant regularly tried to pay rent to the husband of the landlady but it was avoided and they further contended that in this manner, they have been made to be in arrears by the landlady for taking some advantage over them. They admitted that the photo business was closed and the entire material of photo business was removed from the shop premises. They denied that respondent No. 2 Pratapsing was in occupation and use of the tenanted premises. They also contended that Hiralal entered into a partnership with Pratapsing and started an engineering workshop therein under the name and style of "Sarita Engineering Works". They further contended that Hiralal is still occupying the premises and is a tenant of the premises. They admitted that equipments and machinery are kept in the tenanted premises, as the same is required for the business of welding. According to them, there was no question of intimation or written consent of the landlord as there was no sub-letting. They contended that there was no specification of business by Hiralal at the time when he obtained the tenanted premises on rent. It is their contention that Hiralal is entitled to do any business legally allowed in the premises. They denied that welding and repairing shop causes waste as alleged by the landlady. They denied also that this impairs the value and utility of the premises.

4. The parties went to trial and oral and documentary evidence was led. It appears that the partnership-deed between Hiralal and Pratapsing was also produced and after considering the entire evidence, the learned Rent Controller, on 19-7-1973, granted the application of the landlady on all the four counts i.e. under clauses 13 (3) (i) (ii) (iii) and (iv) of the Rent Control Order. He held that Hiralal was in arrears of rent for more than 3 months when the application was filed. He also held that Hiralal was a habitual defaulter and that Hiralal had sublet the tenanted premises to Pratapsing. He held further that there was a change in user and he held that there was no permission of the landlady for sub-letting.

Hence he allowed the application, but directed the parties to bear their own costs.

5. Being aggrieved by this order, both Hiralal and Pratapsing preferred an appeal, which was heard by the Resident Deputy Collector, Bhandara, with Rent Control Appellate Powers. The Rent Control Appellate Authority disagreed with the Rent Controller on all the points. To the necessary details, I will come later on at the time of discussing the facts. The appellate Authority, therefore, set aside the order of the Rent Controller and allowed the appeal. Feeling aggrieved by the decision of the Appellate Authority, the landlady preferred a review application before the Resident Deputy Collector, but the Reviewing Authority dismissed the review application on the ground that nothing has been pointed out that there are manifest errors of facts or law. Being aggrieved by this decision, the landlady has come to this Court by way of writ petition.

6. One of the important grounds for permission to terminate the tenancy is of sub-letting. It is an undisputed fact that the premises were let out to Hiralal for the purposes of a shop. It is also an undisputed fact that at present some welding machinery etc. is kept in this shop. It is further an undisputed fact that this welding machinery etc. belonged to respondent No. 2 Pratapsing. According to the landlady. Hiralal has sublet the premises to Pratapsing. It is denied by both the respondents and, according to them, there is a partnership between Hiralal and Pratapsing and that this business which is started in the tenanted premises in place of photo business, is the partnership business of Hiralal and Pratapsing and, therefore, this does not amount to sub-letting. All these are admitted facts. Mr. Udhoji relied upon some rulings in this respect. First of all he relied upon a decision of the Nagpur High Court in Tansukhdas v. Shrimati Shatnabai 1954 NLJ 100. There is no doubt that this ruling supports the contention raised by Mr. Udhoji. In this ruling, the petitioner alone was the tenant of the non-applicant for some years and he subsequently allowed other persons to enter into partnership with himself and allowed them to run the partnership business in the premises. It was held by Division Bench of the Nagpur High Court that partnership was a distinct personality than the petitioner himself and his act amounted to sub-letting. Then he placed reliance upon a ruling in Gangaram v. Ashok Kumar 1969 NLJ Note 43. In that ruling, the landlord alleged that the tenant had earlier sub-let the premises for about five years and had again sub-let them to another person, and the tenant pleaded that he had entered into a partnership with the person who was said to be in actual possession and though the business was carried in the name of a stranger, under the deed of partnership, he had contributed some capital and was entitled to some share in the profits. A deed of partnership made after the application was already made was filed. The partnership deed made no provision as to who was to manage the business. There was no evidence that the tenant who had a shop of his own in other premises ever attended to the business or that he had actually invested any capital and no account book of the alleged partnership business were produced. In view of these facts it was held by a learned Single Judge of this Court that all these facts indicated that the document of partnership

were merely a cloak brought into being in order to defeat the application of the landlord under clause 13 (3) (iii) of the Rent Control Order. It will, therefore, be seen that this is a finding in view of the particular facts and circumstances of this case and, therefore, this finding cannot be of any help to Mr. Udhoji in this case. It was held by this Court in that ruling that the question whether the relationship between the partners amounted to a partnership or not could not be decided merely on the basis of a deed, which they had filed and the Court is entitled to examine all the incidents of the relations between the parties as shown by the written agreement together with surrounding circumstances at the time when the contract was entered into, conduct of the parties, as well as other facts that may be relevant, such for instance, as the right to control the property, the manner in which accounts of the business are kept, the right to receive profits and the liability to share the losses and from these deduce the real intention of the parties. In the instant case, it is an admitted fact that Hiralal was in service as a cinema operator in some talkies at Gondia. According to Hiralal, he was not to invest anything but he was to do the work of sundry nature of writing accounts etc. and for this purpose he was offered some share in this partnership. The deed of partnership is produced. However, the facts as laid down in the aforesaid case are not brought on record. As, against this, Mr. Masodkar relied upon a decision of this Court in *Bajranglal v. Resident Dy. Collector* 1964 NLJ Note 86. That is also a Division Bench Ruling of this Court. In that ruling the tenant closed the original business and started carrying on another business in partnership with another person. It was held by the Division Bench that use of premises by partnership is permissive and this does not amount to sub-letting. Mr. Udhoji invited my attention to the fact that in this ruling the Division Bench distinguished the earlier rulings of the Nagpur High Court in *Tansukhdas v. Shrimati Shamabai* but it must be borne in mind that ruling in the case in *Bajranglal* is a ruling of the Division Bench of this Court and it is binding upon this Court and this ruling clearly shows that this is not a case of sub-letting. The Division Bench observed as follows:

The mere fact that a tenant permits the tenancy premises to be utilised by a partnership in which he is a partner, does not mean that the relationship of a landlord and tenant is created between the tenant and the partnership. It is open to a partner to permit the use of his property by the partnership such permissive user is only by way of licence and will not create in the partnership the rights of a sub-tenant or a tenant.

This ratio of the Division Bench in this ruling clearly applies to the facts of this case and hence I am satisfied in the instant case that the landlady has failed to prove that Hiralal has sub-let the premises to Pratapsing.

7. The next important question is about the change of user. At the outset, Mr. Masodkar urged that in the title of the application, the landlady has mentioned that it was an application under clause 13(3)(i) and (ii) read with clause 12-A of the Rent Control Order. Hence according to him, the landlady had not filed any

application under clause 13(3)(iv), which covers the mischief of change of user. But there is no force in this submission. It is clear from the averments made in the application that in clause 6 of the application, which is filed in the trial Court, the landlady has clearly mentioned that at present the premises are being used for a purpose other than that for which it was leased out to the non-applicant No. 1 i.e. Hiralal. She alleged further that the welding and repairing shop requires a lot of hard hitting and such act of waste as are likely to impair the value and utility of the premises. She alleged further that every now and then trucks, cars and rotten pieces of metal arrive at the shop for being joined and it creates a lot of noise and disturbances etc. It is, therefore, apparent that in clause 6 of her application, the landlady has alleged that there is a change of user in the instant case. It is an admitted fact that Hiralal had obtained premises for a shop. It is further an admitted fact that at present all the shop material relating to the photo business of Hiralal is removed from the premises and it is an admitted fact that two welding machines are installed in the tenanted premises and the work of welding etc. is being carried out in the tenanted premises where the photo shop of Hiralal was previously run. In this behalf Mr. Masodkar relied upon a ruling of the Supreme Court in Maruti Bala Raut Vs. Dashrath Babu Wathare and Others, . The Supreme Court has laid down in this case that the High Court cannot interfere with the finding of fact in a petition under Article 227 of the Constitution. In the instant case, I am not interfering with the finding of fact. The question as to what was the previous user and what is the present user is a question of fact. Whether the present user amounts to a change of user is an inference to be drawn from the admitted or from the proved facts and the drawing of such an inference cannot be said to be a question of fact. It is a question of law or at any rate is a mixed question of law and fact. In the instant case, I am not interfering with the findings of the Courts below about the actual user which was there in existence previously and which is there at present. As already stated, it is an admitted fact that the premises were taken on rent and for a shop and a photo studio was conducted there. It is further an admitted fact that now two welding machines are installed and the work of welding, repairs etc. is being carried out in the tenanted premises. Now it is a work shop. These are the admitted facts and hence there can be no question of any interference by this Court with the question of fact. The question whether such a change in user amounts to a change of user as contemplated by clause 13(3)(iv) of the Rent Control Order is necessarily an inference which is to be drawn from the admitted facts and as already pointed out, such an inference cannot be a question of fact. The present user amounts to a change of user inasmuch as two welding machines are admittedly installed there in place of a photo studio and the work of welding, repairing etc. is carried on in the tenanted premises where previously photo studio was run. Hence, the observation of the Supreme Court in this ruling does not lend any support to the contention of Mr. Masodkar in this respect. Then Mr. Masodkar relied upon a ruling in Navinchandra v. Mh. Akbar Khan 1960 NLJ Note 49, and it is also a Division Bench ruling on the question of power of review under clause 21(2-A) of the Rent Control Order. I do not think that this ruling is

of any help in this matter. I have already pointed out that in a revision application, which was filed by the landlady, the Reviewing Authority, by writing a two-line order, rejected the review application, stating that there was no manifest error of law or fact, which was brought to notice of the Reviewing Authority and hence nothing in this ruling helps the contention of Mr. Masodkar. I am, therefore, satisfied, that the landlady has proved that there is a change of user in the tenanted premises and this is covered by clause 13 (3) (iv) of the Rent Control Order and to this extent, this writ petition deserves to be allowed.

8. Then the question is whether the tenant is defaulter. On an appreciation of evidence, the appellate authority has found that the husband of the landlady used to receive rent from the tenant and used to pass rent receipts at some time later after the date on which the amount of rent was actually received by him. On a consideration of the evidence, this is found by the appellate authority and it is a question of fact and hence this Court cannot interfere with the finding of fact in this writ petition. It is the contention of the tenant Hiralal that on account of these facts, the schedule which is filed by the landlady, cannot be relied on. Mr. Udhoji made a grievance that the schedule related only upto the period 31-5-1970. According to Mr. Udhoji, the landlady had made a clear allegation in her application that the rent from 1-6-1970 to 31-7-1971 i.e. for a period of 14 months was not paid on the date of this application. It does not appear from the judgment of the Courts below that this point was specifically pleaded before the Courts below and, therefore, I do not think that this question can now be pressed in this writ petition and, therefore, I refuse to interfere with the findings of the appellate authority that the landlady had failed to prove that the tenant was a habitual defaulter. As the arrears are paid, there is no question of passing any order in accordance with clause 13 (3) (i) of the Rent Control Order.

9. Result is that the writ petition deserves to be allowed only so far as the relief under clause 13 (3) (iv) of the Rent Control Order is concerned and so far as the other grounds are concerned, the writ petition deserves to be rejected. The result is that the writ petition is rejected so far as clauses 13 (3) (i) (ii) and (iii) of the Rent Control Order are concerned, but the writ petition is allowed so far as clause 13 (3) (iv) of the Rent Control order is concerned and the landlady is permitted to terminate the tenancy of tenant under clause 13 (3) (iv) of the Rent Control Order. In view of the divided success, there will be no order as to costs. The rule is made absolute so far as relief under clause 13 (3) (iv) of the Rent Control Order is concerned and the writ petition is, therefore, only partially allowed.