
(2006) 09 BOM CK 0139
In the Bombay High Court
Case No : L.P.A. No. 259 of 2005

Ramdas Drug Agencies and another	Vs	APPELLANT
Mayadevi Sharma and others		RESPONDENT

Date of Decision : 28-09-2006

Acts Referred:

Citation : (2006) 09 BOM CK 0139

Hon'ble Judges : D.S. Zoting, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : Anjan De, for the Appellant; Dhumale holding for A.M. Parchure, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—By the present Letters Patent Appeal, the appellants impugn the judgment and the order passed by the learned Single Judge of this Court, on September 12, 2005 in the Writ Petition No. 2649 of 1993, by which the learned Single Judge dismissed the writ petition filed by the appellants.

2. Few facts essential for deciding the present Letters Patent Appeal are as under:

Respondent Nos. 1 and 2 to the present appeal had purchased the tenanted premises from one Dr. N. S. Khot on 26-8-1981 and thereafter filed two applications before the Rent Controller, Amravati. The first application was for seeking permission under clause 13(3)(i)(ii)(iii) of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as "Rent Control Order", for short). The second application was under Clause 13(3)(i)(ii). The Rent Controller on 15-7-1992 rejected both these applications. Respondent Nos. 1 and 2 preferred two separate appeals before the Additional Collector, Amravati, who on 12-4-1993, set aside the common order passed by the Rent Controller and granted permission under clause 13(3)(i)(ii)(iii) to the respondent Nos. 1 and 2. That order of Appellate Authority was put to challenge under the writ petition No. 2649 of 1993 by the appellants.

3. The appellants claimed that the original landlord Dr. Khot, had let out the premises in question to tenant M/s Aphali Pharmaceuticals Limited, i.e. respondent No. 3 in this appeal. Respondent No. 3 had appointed appellants as their regional stockist and given the suit premises in the possession of the appellants somewhere in April, 1965 as sub-tenant. The appellants specifically averred that for such sub-letting by respondent No. 3 to the appellants there was a written permission that was given by the Dr. Khot. The appellants then pleaded that since thereafter appellants have been in occupation of the suit premises and the licenses were renewed from time to time in their favour by the Authorities. They further averred that Dr. Khot permanently left for London with his family in the year 1984-85 and expired in London but the rent was regularly paid by the appellants to respondent No. 3 and as such, after coming into force of second amendment effective from 26-10-1989, to the Rent Control order, the status of the appellants stood elevated to a tenant in place of respondent No. 3 and as such, the appellants were the tenants of the landlord. The appellants then, set up a plea of acquiescence stating that the original landlord Dr. Khot had never objected to the occupation of the appellants from the year 1965 and therefore, the conduct of the landlord indicated acquiescence.

4. In the Trial that was held before the Rent Controller, the appellants examined Avdhutkumar Jagannathprasad Sharma as witness No. 1, who stated that in the year 1965, Dr. Khot had given written permission to the original tenant i.e. respondent No. 3 and document of written permission was in the custody of respondent No. 3. The said document of written permission was not produced on record by the appellants. The appellants did not at all aver such crucial pleading that the documents of written permission was in the custody of respondent No. 3 nor pleaded even a bare minimum contents of the said alleged documents about the terms and conditions and so on and so forth. Therefore, the evidence that the document was in the custody of respondent No. 3, was liable to be ignored. The appellants examined one Dr. Anand Palsodkar, to establish that the appellants used to pay the rent by cheques to this witness as and when Dr. Khot used to visit London. Even, this important aspect was not at all pleaded by the appellants. This witness candidly admitted that he had no authority to collect the rent on behalf of Dr. Khot nor did he issue any receipt to the appellants.

5. Dr. Anjan De, the learned counsel for the appellants criticised the judgment of the learned single Judge and the Rent Control Authorities on the following grounds.

(i) In view of the admitted fact that the appellants were in occupation of the suit premises since 1965 without any objection from the landlord and in the wake of licenses being issued from time to time in favour of the appellants by the Authority for running a Medical Agency, the plea of acquiescence set up by the appellants ought to have been accepted by the learned single Judge.

(ii) In view of the fact that the appellants had served notice to produce documents, on the respondent No. 3 for production of "written permission", the

non-production thereof ought to have been construed as existence of the documents of the written permission and coupled with the other circumstantial evidence a finding ought to have been returned that there was a "written permission" from the landlord for sub-letting premises to the appellants.

(iii) In the wake of amendment to section 12(A) of the Rent Control Order vide Notification/Order No. BRA 1086-462-D-XII dated 26th October, 1989. A sub-tenant becomes a tenant of the landlord in view of the fact that premises were "lawfully" sub-let to appellants.

(iv) If the premises are lawfully sub-let to the appellants, the requirement of written permission under clause 13(1)(3)(iii) or written consent under clause 12-A is not mandatory.

6. Shri Dhumale, Advocate, holding for Advocate A. M. Parchure, appearing on behalf of respondent No. 3, supports the judgment and order passed by the learned Single Judge of this Court.

7. Having heard Dr. De, in extenso, we proceed to record our findings on the above points raised by him. Clause 12-A of the Rent Control Order is quoted below:

"12-A : No person being a tenant shall sub-let any portion of the accommodation under his occupation except in pursuance of a condition in the lease deed executed in favour of the tenant or with the written consent of the landlord:

[provided that, on and from the date of commencement of the Central Provinces and Berar Letting of Premises and Rent Control (Amendment) Order, 1989, if any premises or part thereof are lawfully sub-let to a subtenant the sub-tenant shall become the tenant of the landlord on the same terms and conditions as he would have held from the tenant of the tenancy had continued.]"

Clause 13(1)(3)(iii) is quoted below.

Clause 13(1) "No landlord shall, except with the previous written permission of the Controller....

(3)(iii) That the tenant has without the written permission of the landlord sub-let the entire premises or any portion thereof or"...

8. Perusal of Clause 12-A, would reveal that it expressly forbids the tenant from sub-letting any accommodation save with the written consent of the landlord. The proviso to clause 12-A that was added on 26th October, 1989, provides that the sub-tenant shall become the tenant of the landlord if, the premises are let out to such sub-tenant "lawfully". Dr. De, pressed into service the proviso to contend that the appellants have become tenants of the landlord, they having been inducted "lawfully" and, therefore, requirement of written consent in the main clause was extinguished.

We do not agree with the proposition canvassed by Dr. De. There is no doubt in

our mind that where main provision is clear, its effect could not be cut down by the proviso. In the case reported in *T. Devadasan Vs. The Union of India (UOI) and Another*, , in paragraph 16 the Apex Court has held that a proviso or an exception cannot be so interpreted as to nullify or destroy the main provision. Further the proviso cannot be construed in a manner that would be in direct conflict with the fundamental structure of the main provision. A proviso cannot be permitted by construction to defeat the basic intent expressed in the substantive provision, (see in the case of *Vishesh Kumar Vs. Shanti Prasad*, .)

9. In this context, looking to clause 13(1)(3)(iii), it is clear that if a tenant sub-lets the premises without written permission of the landlord, permission to give notice to determine the lease is required to be granted. In other words, consequence of not having written permission is provided by clause 13(3)(iii) viz. to grant permission to evict the tenant. Thus, reading of clause 12-A with 13(3) (iii) harmoniously and keeping in mind that the interpretation which defeats the object of a statute is not permissible, we hold that a written consent from the landlord is a sine-qua-non for sub-letting.

10. Now, coming to the fall-back argument of Dr. De, on the basis of the term "lawfully", we find that the term lawfully, in the present context, means more than merely not unlawfully, rather it should be understood to connote requirement for a some positive legal underpinning. In the instant case, we find that the appellants had boldly set up a plea that written consent was obtained from the landlord for sub-letting premises to the appellants. The appellants, however, miserably failed to place on record and prove such written consent or written permission. A feeble attempt on the part of the appellants to press into service notice to produce documents tendered to respondent No. 3, also could not be of any help for the reasons more than one. In the first place, it was nowhere the case of respondent No. 3 that the respondent No. 3 had obtained written permission/written consent of the landlord and that the same was in his custody. Secondly, landlord never admitted that any such written consent was given by him. When such a plea was set up by the appellants, it was for them to discharge the burden of proof about the written consent. There was no order made by Rent Controller on the said notice for producing the documents. In view of this we hold that the appellants have failed to prove that they have been occupying the premises lawfully.

11. As regards the contention of Dr. De, about the acquiescence, the answer is the following observations of the Apex Court in the case of *Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others*, , while interpreting a similar provision.

"7... We are in agreement with this approach to the interpretation and it is in consonance with the view expressed by this Court earlier as mentioned hereinbefore. In the aforesaid view of the matter we are of the opinion that it was necessary for the tenant to obtain the consent in writing to sub-letting the premises. The mere permission or acquiescence will not do. The consent must be to the specific sub-letting and must be in writing."

...11 "Reliance was placed on the observations of Craies on Statute Law 7th Edition 261 wherein in the election case requirement that ballot paper had to be kept in a particular manner was considered to be directory and similarly it was submitted in this case the requirement of the consent to be in writing should be construed to be directory. It was urged that the conduct of the parties indicated that there was no breach of the covenant. We are unable to agree. Here the situation is clearly different. Here the requirement of consent to be in writing was to serve a public purpose, i.e. to avoid dispute as to whether there was consent or not."

12. For all the reasons given above, we find no substance in the present Letters Patent Appeal and the same is dismissed. Costs made easy.

Dr. De prayed for continuing interim relief granted by this Court on 20th October, 2005, for a period of six weeks. In view of the fact that the interim relief is operating since about a year, we continue the interim relief for further period of six weeks from today.