

(2003) 08 BOM CK 0123
In the Bombay High Court
Case No : Writ Petition No. 278 of 1990

Ravinbhushan Anant Datar and Shashibhushan Anant Datar	APPELLANT
Vs	
Waman Dattatray Purohit	RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2),
12(3), 13(1)
Transfer of Property Act, 1882 — Section 106

Citation : (2004) 1 BomCR 585 : (2004) 1 MhLj 100

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : V.S. Gokhale, for the Appellant; Sanjay Kshirsagar, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—The 4th Additional Judge of the Small Causes Court at Pune, decreed the suit for eviction filed by the Petitioners against the Respondent on 16th August 1985. The suit was decreed on the ground spelt out in Section 13(1)(k) of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947, namely, that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit and u/s 12(3)(a) of the Act as it stood prior to its amendment in 1987, namely, that there was a default on the part of the Respondent in the payment of rent. The judgment and order of the Learned Trial Judge was reversed in appeal on 14th August 1989 by the Vth Additional District Judge, Pune.

2. The premises which form the subject matter of dispute consist of a property bearing House No. 715-B, situate at Sadashiv Peth, Pune-411 030. By a registered Lease Deed dated 1st June 1967, an area admeasuring 2700 sq. ft. consisting of three sheds and an appurtenant open space came to be let out to

the Respondent. The rent of the premises was fixed at Rs. 1200/- per annum payable quarterly. The purpose of the letting was for the manufacture of woodcraft.

3. On 25th March 1982, a notice came to be issued by the Petitioners to the Respondent claiming that the rental payments were in arrears from 1st April 1977 and that a total amount of Rs. 6,000/- was due and payable. The notice was received by the Respondent on 30th March 1982. The petitioners instituted on 15th July 1982 a suit for eviction against the Respondent claiming a decree for eviction on the ground that the premises had not been used for the purposes for which they had been let, without reasonable cause for a continuous period of six months immediately preceding the date of the suit and on the ground of default in the payment of rent. Evidence was adduced in the course of the trial. By a judgment and order dated 16th August 1985, the suit was decreed by the 4th Additional Judge of the Small Cause Court, Pune, In so far as the ground of non user was concerned, the Learned Trial Judge found that the premises had not in fact been used for a period in excess of six months prior to the institution of the suit. In arriving at this conclusion, the Learned Trial Judge relied upon several circumstances, among them being, (i) the absence of electricity consumption in the premises; (ii) the fact that the telephone connection which was in existence in the premises since 1965 had been removed in 1977; (iii) there was no business licence obtained from the Municipal Corporation or under the Shops and Establishments Act; (iv) the Respondent had neither produced nor maintained any Account Books in respect of the business activities allegedly carried on from the suit premises. Apart from the aforesaid circumstances, the Learned trial Judge relied upon the evidence of the First Petitioner who gave evidence in support of the case. The evidence of a photographer who had taken photographs at Exhs. 34 and 35 demonstrating the condition of the premises, the evidence of a representative of the Petitioners who had been collecting rent and evidence of a neighbour were inter alia relied upon by the Trial Judge in order to support the finding that there had been no user of the premises. In so far as the question of arrears was concerned, the Trial Judge held that a decree for eviction was liable to be passed u/s 12(3)(a) of the Act on the ground that the Respondent had neither preferred an application for the fixation of standard rent within 30 days of the receipt of the notice u/s 12(2) of the Act, nor had he deposited the amount of arrears in the Court. The judgment and order of the Learned Trial Judge came to be reversed in appeal on 14th August 1989. The First Appellate Court, in so far as the question of non-user was concerned, held that (i) the evidence of the representative of the plaintiffs who used to collect rent had to be discarded because he was an interested witness; (ii) the photographs which were taken to establish the state of disuse could not be relied upon because they were of a part of the premises; (iii) evidence of the neighbour to the effect that the premises were not used could not be relied upon since he admitted that during a part of the day, he was away from his residence at work; and (iv) that no prudent man would pay rent if he was not using the premises.

The Trial Court, it must be noted, had also relied upon the inspection of the premises by the Court during the course of the trial. The Appellate Court held that the inspection by the Trial Court would only reveal the status of the property after the institution of the suit and was, therefore, not relevant as to whether the premises had not been used continuously for a period of six months preceding the date of the suit and as to whether there was non-user of the premises for the purpose for which they were let. In so far as the question of arrears is concerned, the First Appellate Court held that this was a case of a yearly tenancy; the tenancy had not been terminated u/s 106 of the Transfer of Property Act, 1882 and that in the circumstances, the suit for eviction was not maintainable.

4. Counsel appearing on behalf of the Petitioners has assailed the findings of the First Appellate Court in so far as non-user of the premises is concerned. Counsel urged that the Trial Court had relied upon several circumstances such as the absence of any electricity consumption, the absence of a telephone connection which had in fact been removed, the absence of a business licence in respect of the premises and the failure of the Respondent to produce any Account Books. Counsel submitted that while it is true that this Court in its jurisdiction under Article 227 would not review the appreciation of evidence by the First Appellate Court, this was a case where the approach of the First Appellate Court was perverse and would, therefore, call for interference by the Court. Moreover, it was urged that this was a case where ex-facie the First Appellate Court failed to consider material and relevant circumstances which had been relied upon by the Trial Court. On the other hand, Counsel appearing on behalf of the Respondent sought to support the judgment and order of the Appellate Court.

5. Now, a perusal of the judgment and order of the Learned Trial Judge would show that the Court relied on several circumstances in order to arrive at the finding that a ground for eviction u/s 13(1)(k) of the Act has been established. These circumstances included the following:

- (i) There was admittedly no electric connection in the suit premises;
- (ii) The Respondent-tenant failed to produce even a licence in respect of the premises which in the ordinary course would be necessary in order to conduct any business activity therein; and
- (iii) No Accounts Books, register of workers or wage register was produced by the Respondent to establish that any business activity was being carried on.

6. The aforesaid circumstances, emerge clearly from the cross-examination of the Respondent in the course of the trial. In paragraph 6 of the notes of evidence, the Respondent made the following admissions:

"6. I have not produced the Shop Act licence of the suit premises. There is no electric connection to the premises. There is no necessity to obtain permission of the Corporation for using the premises as a godown. I have not produced the

register of workers, that is, wage register to show that the workers work in the suit premises. It is not correct that I never used the suit premises. It is not correct that I never used the suit premises for any businesses, since letting till today. There was a phone in the name of Wood Turnery and Textile Requisites in the suit premises since 1965 till 1977 and then there is no phone. I have not produced record about concreting of the shed. There is a passage of ten feet in width in between the suit premises and adjoining the building of the plaintiff and it is a common passage. Adjoining the suit premises to the other side, there are buildings. Including the garage of the plaintiffs, the entire plot measures about 2700 sq. ft. Unless I refer to the drawing, I cannot tell the approximate measurements of the same. I can tell about the open space without referring to the drawing. Grass is grown near about the beater. The condition of the suit premises is as per photos. Exhs.34 and 35. The condition of the entrance gate as per photo Exh.34 is not in collapsed condition. I do not know whether the gate is in fallen condition and the suit premises are trespassed by public. It is not correct that the sheds are also in a dilapidated condition. The coconut tree is referred in the rent note." (emphasis supplied).

7. The First Appellate Court ignored the aforesaid admissions and the inference drawn by the Learned Trial Judge, quite correctly, on the basis of the said admissions. Apart from that, a reading of the judgment of the First Appellate Court would reveal, with respect, that the entire approach of the First Appellate Court suffers from perversity. The First Appellate Court held that the photographs which were relied upon by the Petitioners to establish the condition of the premises had to be discarded because they were only in respect of the part of the premises. What the First Appellate Court has overlooked is the admission of the respondent in the course of the cross-examination (in paragraph 6 of the notes of evidence) which is to the effect that the condition of the suit premises is as per the photographs Exhs.34 and 35. Once the Respondent himself had admitted in categorical terms that the photographs reflect the condition of the premises it would be most inappropriate to discard the photographs on the ground that they were only of a portion of the premises. The evidence of the neighbour who deposed in support of the fact that the entire property had been overgrown with shrubs was discarded on the ground that the neighbour has deposed that he works in a shop between 9.30 a.m. to 12.30 p.m. and 4.30 p.m. to 9.30 p.m. The First Appellate Court then proceeded on the hypothesis that it was not unlikely that the Respondent would be visiting the premises during the absence of the witness. There may be some substance in the view of the First Appellate Court that the inspection visit by the Trial Court could not be relied upon since that would only reflect the position of the suit premises after the institution of the suit. Be that as it may, the admissions of the Respondent coupled with the uncontroverted circumstances adverted to hereinabove would clearly demonstrate that the premises had not been used without reasonable cause for a period in excess of six months prior to the institution of the suit without reasonable cause. This is a case, therefore, where vital pieces of

evidence have not been considered by first Appellate Court. In other aspects the inferences drawn are contrary to the overwhelming weight of the evidence on record.

8. Counsel for the Respondent sought to urge that there was no electricity connection because the premises have been used only as a godown since the Respondent had certain adjoining premises in which the factory is situated. No such case has been established by the Respondent in the course of his evidence. On the contrary, the case of the Respondent in the course of Examination-in-Chief is that he was using the premises for painting, woodwork and paper manufacturing. That being so, the Learned Trial Judge was clearly justified in coming to the conclusion that there was a complete failure on the part of the Respondent to produce any material which would even prima facie indicate that the premises had been used for the purpose for which they were let. The absence of electricity/the absence of a telephone which was, in fact, removed after 12 years in 1977, the absence of a business licence and the failure of the Respondent to produce Accounts Books and a wage register would only go to establish that a ground for eviction has been clearly established with reference to Section 13(1)(k). An adverse inference would have to be drawn against the Respondent for a complete failure to produce any evidence whatsoever to show the user of the premises for the purposes for which they were let. I am conscious of the limitations on the exercise of the jurisdiction under Article 227 of the Constitution. This Court would not in that jurisdiction reappreciate the evidence, substitute its own conclusions for those of the Court below or adopt a particular view only because it commends itself better than that of the primary fact finding Court. However, this is a case where the First Appellate Court has failed to consider and has completely ignored material evidence on the record, including clear admissions of the Respondent. Hence, the interference of the Court is warranted in order to ensure that a failure of justice does not ensue.

9. In so far as the question of default is concerned. Counsel appearing on behalf of the Petitioners submitted that the Learned Trial Judge had correctly held that despite a notice of demand dated 25th March 1982 which was received on 30th March 1982, the Respondent did not either remit the arrears of rent which were demanded from 1st April 1977 or file any application for the fixation of standard rent. The Learned Trial Judge held that the case fell u/s 12(3)(a). The First Appellate Court on the other hand came to the conclusion that the notice which had been issued was not valid since the tenancy was a yearly tenancy and the provisions of Section 106 of the Transfer of Property Act, 1882, were not complied with. Counsel urged that even if the aforesaid finding were to be correct, the case would still have to be considered with reference to Section 12(3)(b). In the present case, the suit was instituted on 15th July, 1982 and issues came to be framed on 21st June 1984 which is the first date of hearing. In para 8 of the judgment of the Trial Court, there is a reference to the deposits which were made by the tenant of Rs. 7616/- on 17-8-1982. Rs. 1000/- on 14-4-83, Rs. 800/- on 5-9-1983 and Rs. 2000/- on 24-1-1985, totalling in all to Rs.

11,460/-. The question as to whether the provisions of Section 12(3)(b) would be attracted: whether the Respondent had duly complied with the obligation to deposit the arrears of rent on the first date of hearing and to continue to deposit the rent regularly thereafter has not been considered by the First Appellate Court. Consequently, I indicated to Learned Counsel that if the issue of default were to be considered independently, a fit and proper case may exist for an order of remand to the First Appellate Court to reconsider the question of default. After the argument were concluded, I had indicated to the Counsel for the parties that I was inclined to set aside the findings of the First Appellate Court in so far as the question of non-user is concerned. Counsel appearing on behalf of the Petitioners has stated before the Court that in the circumstances, it is not necessary for this Court to go into the correctness of the finding of the First Appellate Court on the question of default in the payment of rent.

10. In my view, the Petitioners are entitled to succeed on the first point, namely, that a ground for eviction has been established u/s 13(1)(k) of the Act. The petition is accordingly allowed. The judgment and order of the Learned Vth Additional District Judge dated 14th August 1989 is quashed and set aside. The suit for eviction filed by the Petitioners being Civil Suit No. 1438 of 1982 shall accordingly stand decreed.

11. On the request of the Counsel appearing on behalf of the Respondent the execution of the judgment and order shall remain stayed for a period of eight weeks from today.