
(2003) 01 BOM CK 0040

In the Bombay High Court

Case No : Civil Revision Application No. 2144 of 2002

Sagir Ahmed Nanhe

APPELLANT

Vs

Mrs. Maria Piedade Gonsalves

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 18, 19, 41

Citation : (2003) 2 ALLMR 554 : (2003) 4 BomCR 635

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : Navin Parekh and Hetal Patel, for the Appellant; N.K. Mudnaney, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karnik, J.—Heard learned counsel for the parties.

2. The husband of the respondent was a tenant in the premises bearing shop No.1 at 104, Matharpakhadi Road, Mazgaon, Mumbai-10 (for short the suit premises). During his life time, he carried out business of tailoring in the suit premises in the name and style of "Bella Vista Tailors." After his death in 1963, the respondent continued to carry on the said business of tailoring for several years. In the year 1969, she granted a licence to conduct the said business in favour of the petitioner and one other. The licence was renewed from time to time and finally by a Leave and Licence Agreement dated 1st March, 1972, the petitioner alone was granted the licence to carry on the said business of gents tailoring in the same name viz." Bella Vista Tailors." Incidental to the licence to carry out the said business, the petitioner was allowed to use the suit premises for the purpose of carrying on the said business. According to the respondent, this agreement of licence dated 1st March, 1972 was a business conducting agreement and after expiry of the period of the licence, the petitioner ought to have returned the said business along with the suit premises to the respondent.

3. The petitioner disputed the nature of the agreement dated 1st March, 1972. According to him, the agreement was not a business conducting agreement but was a camouflage to avoid creation of sub-tenancy. According to him he was a sub-tenant/licence of the suit premises and was not a business conductor. On expiry of the period of the licence, the petitioner filed a suit bearing R.A.E. Declaratory Suit No. 1310/- 4471/74 alleging that he was deemed to have become a tenant in respect of the suit premises under the provisions of the Bombay Rent and Lodging Houses (Rates Control) Act, 1947 (for short Bombay Rent Act.) The said suit was dismissed for default on 6th October, 1975. The notice of motion bearing Misc. Application No. 1629 of 1975 for restoration of the suit was allowed subject to the petitioner depositing Rs. 5000/- towards the compensation up to July, 1976 within a period of six weeks failing which the motion was deemed to have been dismissed. The petitioner failed to deposit the said amount and therefore, dismissal of the suit became final.

4. Thereafter, the respondent filed a suit bearing L.C. and E.Suit No. 46/56 of 1977 against the petitioner in the small Cause Court, at Bombay. The respondent alleged that by the business conducting agreement dated 1st March, 1972 the petitioner was granted business conducting licence. After narrating the facts relating to R.A.E. Suit No. 1310/4471/74 and the dismissal thereof, the respondent prayed for a decree in the sum of Rs. 6000/- towards the arrears of compensation and also prayed for a decree of eviction of the petitioner from the suit premises. The learned Small Causes Judge, Bombay by its judgment and order dated 11th December, 1997 dismissed the suit of the respondent holding that the respondent had not proved that the petitioner was a conductor of the business in the suit premises and further holding that the petitioner was a deemed tenant. Aggrieved respondent carried an appeal to the Bench of the two Judges of the Small Causes Court. The Appellate Bench reversed the finding of fact reached by the trial Judge and held that the agreement dated 1st March, 1972 was a business conducting agreement and the petitioner was the conductor of the business belonging to the respondent. The Appellate Bench held that the petitioner was not the deemed tenant under the provisions of the Bombay Rent Act, 1947. In this view of the matter, the Appellate Bench of the Small Causes court allowed the appeal and directed the petitioner to hand over the vacant possession of the suit premises along with the running business of Bella Vista Tailoring within three months. Being aggrieved, the present Revision application has been filed by the petitioner.

5. If one looks to the terms of the agreement, it is apparent that the agreement dated 1st March, 1972 was a business conducting agreement. The agreement recites that the respondent was owner of the business of gents tailoring carried on in the name and style of "Bella Vista Tailors" in the suit premises which were taken on rent initially by the respondent's husband. The petitioner was granted licence to run the said business for a period of 11 months commencing from 1st March, 1972. The petitioner was to pay a monthly compensation of Rs. 165/- for the privilege to conduct the business belonging to the respondent. The rent in

respect of the suit premises was to be paid by the respondent to the landlord. The petitioner was allowed to use the suit premises only for the purpose of conducting the respondent's business and for no other purpose. Reading of the agreement creates an unmistakable impression that the licence was of the privilege to conduct the licensor's business. The dominant purpose of the licence was privilege to conduct the business and use of the suit premises was incidental to the conduction of business of tailoring belonging to the respondent. In the circumstances, I find no error in the finding of fact reached by the Appellate Bench of the Small Causes Court, Mumbai.

6. Learned counsel for the petitioner referred to the judgments of this court in (i) Civil Revision Application No. 132 of 1981, Mohd. Hasiat v. Ebrahim Hasan, decided on 6th August 1982 (CM.L.), (ii) Writ Petition No. 5220 of 1986, Radhabai Balkrishna Chavan v. Parvati Mahadeo Pawar and Ors. decided on 8th January, 1988 (CGJ.) and (iii) Smt. Anusuyabai Narayanro Ghate Vs. Smt. Maktumbi S. Nadaf, and submitted that u/s 41 of the Presidency Small Causes Court, Act 1882 (for short the Act) the Small Causes Court, Mumbai had no jurisdiction to entertain and decide the suit. He contended that in view of the finding that there was no relationship of landlord and tenant or licensor and licensee between the respondent and the petitioner in respect of the premises, the suit was not triable by the Small Causes Court u/s 41 of the Act.

7. In my opinion, reference to Section 41 of the Act is misplaced. Section 18 of the Act lays down that subject to the executions mentioned in Section 19, Small Cause Court shall have the jurisdiction to try all suits of civil nature where the amount or value of the subject matter does not exceed Rs. 10,000/-. Admittedly, the suit was valued at less than Rs. 10,000/- and the valuation was never disputed. The only question therefore, to be considered is whether the jurisdiction of the Small Causes Court, Bombay was excluded by Section 19 of the Act. Learned counsel for the petitioner contended that the jurisdiction of the Small Causes Court was excluded under Clause (d) of Section 19. Clause (d) excludes a suit "for recovery of immovable property" from the jurisdiction of the Small Causes Court. As stated earlier, the suit was not for possession of the premises simpliciter. The suit was for possession of the running business. Since the business was housed in the suit premises, it was necessary to get the possession of the premises to recover the possession of the business. The immovable property was used incidental to the business. The pith and substance of the suit was for recovery of the business carried on in the suit premises. The suit was therefore, not excluded from the cognizance of the Small Causes Court under Clause (d) of Section 19. No doubt, the plaint is not very happily worded. Learned counsel for the petitioner invited my attention to valuation clause as well as prayer clause of the plaint to contend that the plaintiff had asked for possession of the premises. In my opinion, the plaint has to be read as a whole. In the plaint, it is specifically alleged that the respondent gave a licence to the petitioner to continue the running tailoring business belonging to the respondent and carried on in the name and style of "Bella Vista Tailors". Some inaccuracies

and inadvertences at some places in the plaint cannot determine the jurisdiction of the court which has to be determined on the basis of the substance of the plaint.

8. In my opinion, substantial justice would be done by confirming the decree passed by the Appellate Bench of the Small Causes, Court. The petitioner had filed a suit for a declaration of his tenancy. The suit was dismissed for default and even after the order for restoration subject to payment of Rs. 5000/- the petitioner did not deposit this small amount and therefore, dismissal of the suit was confirmed. Even a paltry sum of Rs. 165/- per month being the licence fee for a privilege to conduct the business was not paid to the respondent who is a poor widow. The arrears were deposited for the first time in the court when the respondent filed a suit for recovery of the business with the premises.

9. In the circumstances, the Civil Revision Application is dismissed with costs. At the request of learned counsel for the petitioner, the exception of the decree is stayed for a period of four weeks. C.C. is expedited.