

(2011) 05 GUJ CK 0019
In the Gujarat High Court

Case No : Civil Revision Application No. 1410 of 1998

Shaikh Shakurninsa A. Rehman and Others

APPELLANT

Vs

Yakubsha Gulabsha

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Citation : (2011) 05 GUJ CK 0019

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : K.V. Shelat, s 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5-3, for the Appellant; M.I.G. Mansuri, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of present Revision Application, the applicants have inter alia prayed for quashing and setting aside the judgment and order dated 23rd July 1998 passed by the lower Appellate Bench, Small Causes Court, Ahmedabad, in Civil Appeal No. 19 of 1994, whereby the Appellate Bench has set aside the judgment and decree dated 18th October 1993 passed by the trial Court in H.R.P. Suit No. 3524 of 1986.

2. The facts of the case in brief are that the applicants-landlords filed the suit stating that they are owners of the suit property which was let out to the Respondent-tenant for residential purpose. It is the case of the applicant-landlords before the trial Court that the Respondent-tenant paid rent upto 30th November 1984 and he is in arrears of rent from 01st December 1984. The applicants also claimed decree of eviction from the Respondent-original Defendant stating that the suit premises is required by them for their personal use and occupation reasonably and bona fide. Further, it is the case of the applicants before the trial Court that the applicants have acquired suitable residence. The said suit came to be ultimately decreed by the trial Court vide judgment and decree dated 18th October 1993.

2.1 Being aggrieved by the said judgment and decree passed by the trial Court, the Respondent-tenant preferred Civil Appeal No. 19 of 1994 before the lower Appellate Bench, Small Causes Court, Ahmedabad, which ultimately came to be allowed vide impugned judgment and order dated 23rd July 1998 and the matter was remanded to the trial Court. Hence, present appeal.

3. Mr. K.V. Shelat, learned advocate for the applicants, has submitted that the appeal filed by the Respondent before the Appellate Court ought to have been rejected on the ground of the same having been abated; that on the point of comparative hardship when it is brought in evidence that the Respondent had acquired suitable residence, there is no question of considering any comparative hardship to the Respondent and that if the Respondent has chosen to remain absent, the lower Appellate Court ought not to have played the role of the Respondent. In view of aforesaid, it is prayed that present Revision Application may be allowed.

4. Mr. M.I. Mansuri, learned advocate for the Respondent, has submitted that the impugned judgment and order passed by the lower Appellate Court is just and proper. The Appellate Court has after considering the relevant aspects and considering the evidence on record, rightly come to the impugned conclusion. Hence, present Revision Application may be rejected.

5. Having considered the rival contentions raised by the learned advocates for the respective parties, averments made in the Revision Application and the documentary evidence produced on record, including the impugned judgment and order, it transpires that the Appellate Court has after going the pros and cons of the matter decided the matter and came to the impugned conclusion, which is just and proper. It is pertinent to note that the lower Appellate Court has categorically observed in the impugned judgment and order that there is no sufficient evidence on record in support of the findings arrived at by the trial Court and, therefore, the matter has been remanded to the trial Court. The learned advocate for the Appellant has made an attempt to show that the Respondent-tenant was made to know about retirement of his lawyer and even the lawyer had also informed him about the next date and even otherwise, he did not remain present. In fact and in reality, it transpires that prior to the next date of hearing, as the Respondent was suffering from typhoid, prima facie it appears that he could not remain present and, therefore, the ex-parte decree was passed, which has been set aside by the lower Appellate Court.

6. In view of aforesaid, I am of the opinion that the lower Appellate Court has assigned cogent and convincing reasons for arriving at the impugned conclusion. Over and above the aforesaid reasons, I adopt the reasons assigned by the lower Appellate Court and do not find any illegality much less any perversity in the findings recorded. I am in complete agreement with the findings recorded by the lower Appellate Court. No case is made out to interfere with the findings recorded by the lower Appellate Court. Hence, present Revision Application deserves to be dismissed.

7. For the foregoing reasons, present Revision Application fails and is, accordingly, rejected. Rule is discharged. No order as to costs.

8. Since the lower Appellate Court has remanded the matter, it is clarified that the trial Court will decide the matter within a period of three months from the date of receipt of writ of present judgment. It is also clarified that the Respondent-tenant will not seek any type of adjournment and the applicants-landlords will also co-operate with the hearing.

9. The parties are directed to appear before the trial Court on 20th June 2011.