
(1975) 12 BOM CK 0019

In the Bombay High Court

Case No : Special Civil Application No. 1926 of 1974

Shankarlal Laxminarayan Rathi

APPELLANT

Vs

Udaysingh Dinkarrao Rajurkar

RESPONDENT

Date of Decision : 09-12-1975

Acts Referred:

Contract Act, 1872 — Section 23

Citation : AIR 1976 Bom 237 : (1976) MhLj 321

Hon'ble Judges : Dharmadhikari, J

Bench : Single Bench

Advocate : M.P.M. Pillai, for the Appellant; L. Mohta, for the Respondent

Judgement

1. Respondent Udaysingh Rajurkar filed an application under Clause 13 (3) (I), (ii), (iii), (iv) and (vi) of the C. P. and Berar Letting of Houses and Rent Control Order, 1949, referred to hereinafter as the Rent Control Order against the present petitioner Shankarlal Rathi. It is an admitted position that petitioner Shankarlal Rathi is a lessee and the property leased out to him is a Cinema theatre and two shops near the main gate and surrounding open land forming Plot No. 12, Sheet No. 27-C of Akola. Initially a Lease-deed was executed on 4th May, 1946, between the parties. It was a registered lease-deed. It seems from the record that in the year 1964 the landlord had filed an application under Clause 13 (3) (vi) of the Rent Control Order against the tenant, but the said application was rejected. Ultimately the matter came to the High Court. However, according to landlord in view of the Full Bench decision of this Court in which it was held that if a person is already in occupation of any house of his own in the town, he could not file an application under clause 13 (3) (vi) of the Rent Control Order and also in view of other technical difficulties, he withdrew his initial application. Thereafter this fresh application was filed. When the present proceedings were initiated, petitioner Shankarlal Rathi filed an application u/s 34 of the Arbitration Act relying upon an arbitration clause in the lease-deed dated 4th May 1946. The relevant clause in the lease-deed reads as under:

"It is also agreed between the parties that in case any dispute arises in connection with this lease either as regards the construction of the premises or their maintenance or regarding payment of rent or regarding any other matter of dispute whatsoever between the parties, then in that case the same shall be referred to the arbitration of two arbitrators, each party being entitled to name one. The two arbitrators shall before proceeding to enter upon arbitration, name an Umpire and in case the two arbitrators differ, then the point of difference between the two shall be decided by the Umpire. The decision thus given shall be binding on both the parties."

In view of this clause in the lease-deed it was contended by Shankarlal Rathi that the proceedings instituted by the landlord under the Rent Control Order should be stayed till the decision of the arbitration.

2. In reply to this application it was submitted on behalf of the landlord that the question involved in these proceedings can be decided by the Rent Control Authorities alone. According to the landlord, the arbitration clause did not cover the proceedings under the Rent Control Order. He further contended that on an earlier occasion such a plea was not raised by the tenant, and therefore, the application filed by the tenant u/s 35 of the Arbitration Act was liable to be dismissed.

3. The House Rent Controller, Akola rejected the said application, because, according to him, the issue involved in the proceedings cannot form the subject-matter of arbitration. Petitioner Shankarlal Rathi then filed an appeal, which was heard and decided by the Resident Collector, Akola. The learned Resident Deputy Collector also came to the conclusion that the relief sought in the application before the Rent Controller cannot form the subject-matter of an arbitration, and therefore, the application filed by the tenant was not maintainable. In the view of this, he dismissed the appeal. Against these orders the present writ petition has been filed by the original tenant.

4. Shri Pillai, the learned counsel for the petitioner, contended before me that the arbitration clause referred to above is still in force and the dispute involved in the application is covered by the said arbitration agreement. Therefore, according to the learned counsel, in view of the provision of Section 34 of the Arbitration Act. In support of this proposition Shri Pillai has relied upon the decisions of the Supreme Court in *Anderson Wright Ltd. Vs. Moran and Company*, *The Printers (Mysore) Private Ltd. Vs. Pothan Joseph*, and *Michael Golodetz and Others Vs. Serajuddin and Company*,

5. It is not possible for me to accept these contentions. The agreement of lease on which reliance is placed by the petitioner in this petition was executed on 4th May, 1946, that is, much before the Rent Control Order came into operation. The Rent Control Order is a piece of special Legislation enacted for the protection of tenants, on account of the conditions which the World War II had created, there was great demand for accommodation. The low level of construction activities in

the last 2 decades and the absence of proper maintenance and repairs also contributed to the inadequacy of residential accommodation. In those days the landlords were exploiting the situation to their advantage. Not only the rent racketing was in vogue, but several malpractices were employed to enhance the rent and evict the tenants, if they are not amenable to their pressure. In order to check such exploitation and to bring the situation under control, the then Government of Central Provinces and Berar issued Accommodation order in exercise of the powers conferred by Section 2 of the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946. This Order was known as C. P. and Berar Regulation of Letting of Accommodation Act clearly indicates that it was enacted to provide for regulating the letting and sub-letting of the accommodation in the Central Provinces and Berar. The whole Legislation was contemplated for making a provision for better control of rents of houses and to prevent unreasonable eviction of the tenants therefrom. With this object in view, Clause 13 of the Rent Control Order enumerated the grounds which alone will entitle a landlord to evict his tenant. As observed by the Supreme Court in *Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others*, , while dealing with the provisions of U. P. (Temporary) Control of Rent and Eviction Act, the object of the Legislation was to give protection to the tenants from eviction from accommodation. The provisions of the Act were based on public policy. It was intended to protect a weaker section of the community with a view to ultimately protecting the interest of the community in general by creating equality of bargaining power. although the section is primarily intended for the protection of tenants only, that protection was based on public policy. The language of the section is prohibitive in character. While construing the provisions of the U. P. (Temporary) Control of Rent and Eviction Act, which are similar to the Rent Control Order, the Supreme Court observed as follows:

"The Act was passed inter alia to prevent the eviction of tenants from their accommodations. The language of Section (3) is imperative and it prohibits the institution of the suit without the permission. If any landlord institutes a suit for eviction of the tenant without the permission of the District Magistrate, he commits an offence and is punishable u/s 16 of the Act. The object of Section 3 is to give protection to a tenant from eviction from an accommodation. The policy of the Act seems to be that a responsible authority like the District Magistrate should consider the claim of the landlord and the need of the tenant before granting permission. There was alarming scarcity of accommodation. The object of legislature in enacting the law was to protect tenants from greedy and grasping landlords, and from their resorting to court for eviction of tenants without reasonable grounds."

"We think that Section 3 is based on public policy. As we said, it is intended to protect a weaker section of the community with a view to ultimately protecting the interest of the community in general by creating equality of bargaining power. Although the section is primarily intended for the protection of tenants only, that protection is based on public policy. The respondent could not have

waived the benefit of the provisions."

The Supreme Court ultimately held that an agreement in the lease-deed providing that the parties will never claim the benefit of the Rent Control Order and that the provisions of the same will not be applicable to the lease-deed, is illegal in view of Section 23 of the Contract Act, being against the public policy. Similar view was taken by the Supreme Court in *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, . After making a reference to the provisions of Delhi Rent Act in paras. 16, 17 and 18 the Supreme Court observed as under:

"It will thus be seen that the Delhi Rent Act and the Madras Rent Act expressly forbid the Rent Court or the Tribunal from passing a decree or order of eviction on a ground which is not any of the grounds mentioned in the relevant sections of these statutes. Nevertheless, such a prohibitory mandate to the Rent Court that it shall not travel beyond the statutory grounds mentioned in Sections 12 and 13, and to the parties that they shall not contract out of those statutory grounds is inherent in the public policy built into the statute (Bombay Rent Act).

In *Rashiklal Chaunilal's case* (1971) 12 Guj LR 1012 , a Division Bench of the Gujarat High Court has taken the view that in spite of the fact that there is no express provision in the Bombay Rent Act prohibiting contracting out, such a prohibition would have to be read by implication consistently with the public policy underlying this welfare measure. If we may say so with respect, this is a correct approach to the problem.

Constructing the provisions of Sections 12, 13 and 28 of the Bombay Rent Act in the light of the public policy which permeates the entire scheme and structure of the Act, there is no escape from the conclusion, that the Rent Court under this Act is not competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which is de hors the Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in Section 12 and 13 is a sine qua non to the exercise of jurisdiction by the Rent Court under those provisions. Even parties cannot by their consent confer such jurisdiction on the Rent Court to do something which, according to the legislative mandate, it could not do."

eviction In the said decision, the Supreme Court further held that it is not open for a Court to make a decree for de hors the Statute governing the relations of the parties. It is pertinent to note that in the Chapter III of the Rent Control Order a provision has been made for letting of the accommodation. No person is entitled to occupy a house to which the Rent Control Order applies without an order of the Rent Controller. Therefore, it is obvious that the Rent Control Order is a complete Code in itself. It is not only a special Legislation, but to some extent provides exceptions to the general law. It confers exclusive jurisdiction upon the authorities constituted under the Rent Control Order to decide the issues arising out of the Rent Control Order. Clause 13 (1) itself provides that no landlord can, except with the previous written permission of the Rent Controller,

even give a notice to a tenant determining his lease. After coming into operation of the Rent Control Order the jurisdiction in this behalf is vested in the Rent Controller and not in any other authority or Court. Such a jurisdiction cannot be conferred on any other authority even by consent of parties. By an agreement or consent the parties cannot take away or curtail the powers of Rent Controller. Such an agreement will be unlawful and against the public policy behind the Act and the Rent Control Order is to vest such a power or control in the Rent Controller for the benefit of general public. Moreover an appeal lies against the order of the Rent Controller to the Collector under Clause 21 of the Rent Control Order. In this view of the matter, in my opinion, the clause in the agreement referred to above, executed in the year 1946, even if it is assumed that also governed the present controversy, is wholly inconsistent with the provisions of the Rent Control Order. The inconsistency is writ large if the relevant provisions of the Rent Control Order are construed and read in their proper perspective. As observed by this Court in Ratilal Narbheram Vs. Welji Nagji and Another, it is not open for the parties to waive the said right conferred upon the tenant by the Rent Control Legislation. Such contracted by the Rent Control Order, was prohibited by necessary implication and it was not open for the parties to give a bye to the said provisions of the Rent Control Order. If it is held by virtue of the aforesaid clause in the lease agreement the controversy involved in these proceedings could be decided by taking recourse to the arbitration alone, then obviously it will amount to contracting out. As already observed, such an agreement being against the public policy is also hit by Section 23 of the Contract Act.

6. Even apart from this it is obvious from the provisions of Clause 13 of the Rent Control Order that the permission sought by the landlord for giving a notice to the tenant determining the lease on the grounds enumerated in the application can be granted by the Rent Controller alone. Unless such a permission is granted by the Rent Controller, it is not open for the landlord to give a notice power conferred upon the Rent Controller under Clause 13 is coupled with duty. Unless the Rent Controller is satisfied that the conditions laid down in Clause 13 are fulfilled, it is not open for him to grant such a permission. The power is, therefore, conferred exclusively upon the Rent Controller. . If this so, then, in my opinion, by virtue of an agreement between the parties it is not open for the parties to confer such a power upon any other person, including an Arbitrator. The Arbitrator has no jurisdiction or authority to decide the question and to grant or refuse such a permission. It is also not open to the Rent Controller to pass an order in this behalf in pursuance of an Award given by the arbitrator. The satisfaction contemplated by Clause 13 is the satisfaction of the Rent Controller and not of any other person. He cannot pass an order under Clause 13 mechanically. Rent Controller under Rent Control Order cannot pass an order granting permission either in invitum or with the consent of parties on the ground which is de hors the Clause 13 or ultra vires of the Rent Control Order.

7. The decisions on which reliance is placed by Mr. Pillai, referred to hereinbefore,

have no application to the facts and circumstances of the present case. So far as the decision in *Anderson Wright Ltd. Vs. Moran and Company*, is concerned, it only lays down the conditions which should be fulfilled before a stay is granted u/s 34 of the Arbitration Act. The other two decisions, namely, *The Printers (Mysore) Private Ltd. Vs. Pothan Joseph*, and *Michael Golodetz and Others Vs. Serajuddin and Company*, deal with the scope of Section 34 of the Arbitration Act and that too, in altogether different context. Therefore, in my opinion, they are obviously distinguishable.

8. In this view of the matter, in my opinion, the authorities below were right in coming to the conclusion that the provisions of Section 34 of the Arbitration Act had no application to the facts and circumstances of the present case.

9. In the result, therefore, the petition fails and is dismissed with costs.

10. Petition dismissed.