

(2011) 05 GUJ CK 0028
In the Gujarat High Court

Case No : Civil Revision Application No. 1531 of 1996

Shivlal Naranbhai Maharaj

APPELLANT

Vs

Charotar Vidya Mandal

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29, 29(2), 31F

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2011) 05 GUJ CK 0028

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : G.M. Joshi, for the Appellant; Sheetal Patel, for A.J. Patel, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present Civil Revision Application has been filed by the Appellant - Original Defendant u/s 29(2) read with Section 115 of the CPC for the prayer that the judgment and decree passed by the learned Civil Judge (JD), Anand in Regular Civil Suit No. 147 of 1980 dated 18.1.1990 and confirmed by the learned 3rd Extra Assistant Judge, Kheda at Nadiad in Regular Civil Appeal No. 13 of 1990 dated 16.7.1996 may be quashed and set aside on the grounds set out in the memo of the present Civil Revision Application.

2. It is contended inter alia that both the Courts below have failed to appreciate that the notification issued by the State Government would not be applicable and the Bombay Rent Act is not applicable. It is therefore contended that the decree passed under the Bombay Rent Act is totally bad in law. It is also contended that the Court below had no jurisdiction to decide the suit under the Bombay Rent Act as it was specifically contended that the Respondent is a public trust and the Bombay Rent Act would not be application, which has not been appreciated by the Courts below. It is also contended that both the Courts below have failed to

appreciate that the Respondents have accepted the Petitioner as a tenant and accepted rent after the termination of service and therefore the Petitioner cannot be said to be a service tenant. It is therefore contended that both the Courts below have erred in passing the decree and confirming the same u/s 31F of the Bombay Rent Act and therefore the present Civil Revision Application may be allowed.

3. Learned Counsel Mr. G.M. Joshi appearing for the Petitioner submitted that Regular Civil Suit No. 147 of 1980 was filed by the Respondent Plaintiff which was allowed vide judgment and decree dated 18.1.1990. The same was carried by way of Regular Civil Appeal No. 13 of 1990 before learned Extra Assistant Judge, Kheda at Nadiad by the Petitioner - Defendant and the said Appeal was dismissed confirming the judgment and order passed by the trial Court vide its judgment and order dated 16.7.1996. He submitted that both the Courts below have failed to appreciate the basic question which goes to the root of the matter whether the Bombay Rent Act would be attracted or not. He submitted that admittedly the Defendant cannot be said to be a service tenant. For that purpose he referred to the written statement filed by the Defendant at page 51 and submitted that he was in service and thereafter the service was terminated in 1978. He submitted that thereafter also he continued to occupy the premises and the rent was accepted. Meaning thereby he was accepted as a tenant dehors his services. Learned Counsel Mr. Joshi referred to the deposition of the Plaintiff at Exh. 20 and submitted that the notification which has been referred to cannot have any application as it cannot apply prospectively as well as it cannot apply what has happened prior. He pointedly referred to the said notification and submitted that it will not have any application. He submitted that though the notification is issued that the Bombay Rent Act would not be applicable, but the Schedule is not produced to show that it applies to the premises in question. He submitted that the premises in possession and occupation of the Petitioner Defendant tenant was not a residential premises, but it was part of the kitchen, Bombay Rent Act will not have any application. In support of his submission, he referred to and relied upon the judgment of the Hon''ble Apex Court in case of P.J. Irani Vs. The State of Madras, Learned Counsel Mr. Joshi has also referred to and relied upon the judgment in case of Govindbhai Parshottamdas Patel and Ors. v. New Shorrock Mills, Nadiad, reported in 25 (1) GLR 156. He pointedly referred to these judgments to support his submission with regard to the contention about the jurisdiction also that the Civil Court will not have any jurisdiction and also that the provisions of Bombay Rent Act would not be attracted.

4. Learned Counsel Mr. Joshi has also submitted that even the Bombay Rent Act was applicable as no notice has been served and the fact that the rent was accepted it would amount to waiver.

5. Learned Counsel Mr. Sheetal Patel appearing for the Respondent has submitted that the Petitioner was originally allotted the premises as a service

tenant as he was in service. He was permitted to stay in the premises by virtue of his service and when the services were terminated and came to an end he ought to have vacated. However, by way of some favour, nominal rent was taken and he was allowed to occupy the premises. However, mere acceptance of a rent would not confer upon him any status of tenant in the absence of a rent note or a contract. He submitted that even the rent which has been accepted is so nominal and less than what was the prevalent rent. Learned Advocate Mr. Patel also submitted that the notification was issued with regard to the Bombay Rent Act, which would be applicable and the notification (Exh. 23) is more than clear that it applies to the premises which is used for the purpose of residence. He submitted that the submission that the notification would be prospective after it was brought into force, cannot be accepted as it would also have the bearing from the date the notification has been issued. He submitted that there is no question of giving any hearing for the purpose of application of law or the notification.

6. Referring to the judgment of the Hon''ble Apex Court in case of P.J. Irani v. State of Madras and Anr. (supra) he submitted that it will not have any bearing to the facts of the case. He has also referred to the judgment of the Hon''ble Apex Court in case of C. Albert Morris Vs. K. Chandrasekaran and Others,

7. In view of the rival submissions, it is required to be considered whether the present Civil Revision Application can be entertained or not.

8. It is well accepted that the scope of exercise of revisional jurisdiction is limited though Section 29(2) of the Act empowers the Court to satisfy itself about the decision as to whether the decision in Appeal was according to law or not. However, at the same time, it is a revisional jurisdiction and not the appellate jurisdiction. This aspect has been clearly laid down as a guideline by the Hon''ble Apex Court in case of Vice-Chancellor, G.B. Pant University of Agriculture and Technology and Another Vs. Dr. Kewala Nand and Others, (para 5) referring to the earlier judgment of the Hon''ble Supreme Court in case of Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others,

9. Thus, for exercise of revisional jurisdiction, it has to be satisfied that whether the decision arrived at by the Courts below refers to the application of proper law in interpretation and construing the provision of law or document as well as evidence on record. If the Courts below have misdirected in interpreting the provision of law or construing the document or evidence which goes to the root of the matter, then only it will justify exercise of such jurisdiction to prevent miscarriage of justice. At the same time, re-appreciation of evidence will not be within the scope and ambit of revisional jurisdiction.

10. In the facts of the present case, the submissions, which have been made with regard to the applicability of the Bombay Rent Act and the jurisdiction, is required to be considered. Learned Counsel Mr. Joshi has emphasized on this aspect. The submission is devoid of any merit inasmuch as the Petitioner -

Original Defendant was a service tenant and he was allowed to stay in the premises by virtue of his service. After the termination of service, the occupation was permitted and the rent was accepted though it was a nominal rent and not the prevalent regular rent. Therefore, accepting the submission that when the rent was accepted even after his service, he was allowed to continue in the premises. The Respondent was a tenant, still the notification (Exh. 23) has to be considered. The notification (Exh. 23) clearly exempt certain premises. Therefore, if the argument made by learned Counsel Mr. Joshi were to be accepted, then his own appeal before the lower appellate Court as well as present Civil Revision Application u/s 29 itself would not be maintainable.

11. A useful reference can be made to the judgment of the Hon''ble Apex Court in case of *C. Albert Morris v. K. Chandrasekaran and Ors.* (supra), where, in a similar situation the concept of holding over the premises or the property has been discussed by the Hon''ble Apex Court in context of Transfer of Property Act. It specifically refers to the asset of the landlord to the lessee continuing holding over after the expiry of the lease period and the effect thereafter has been discussed.

12. Learned Counsel Mr. Sheetal Patel for the Respondent has also referred to relied upon the judgment of the Hon''ble Apex Court in case of *Sarup Singh Gupta Vs. S. Jagdish Singh and Others*, and submitted that mere fact that the rent has been accepted after the termination of service of notice cannot be determinative. It is also referred to in this judgment that there has to be other evidence to establish the relationship of landlord and tenant and whether the landlord and tenant intended to waive any such notice and such intention has to be covered from the material and evidence on record. It has been specifically observed:

It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver.

13. Therefore, the submissions made by learned Counsel Mr. Joshi with regard to the waiver of the right for eviction also cannot be readily accepted.

14. A useful reference can also be made to a judgment in case of *M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property*, wherein it has been clearly observed:

The consensus of judicial opinion in this Country is that a mere continuance in occupation of the demised premises after the expiry of a lease, notwithstanding the receipt of an amount by the quantum landlord would not create tenancy so as to confer on erstwhile tenant the status of a tenant or a right to the possession.

15. In this context we may refer to the judgment of this Court in case of *Raptakos Brett and Co. Ltd. v. Ganesh Property* (supra). In paragraph 13 of the

judgment, this Court has held:

In view of the aforesaid settled legal position, it must be held that on the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent Court as per the relevant provisions of law. The status of an erstwhile tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession.

16. In light of the aforesaid discussion and the principles, the submissions made by learned Counsel Mr. Joshi cannot be accepted and the present Civil Revision Application deserves to be dismissed and accordingly stands dismissed. Interim relief, if any, shall stand vacated.