

(1999) 03 BOM CK 0107

In the Bombay High Court

Case No : Letters Patent Appeal No. 3 of 1997

Shri Jose M. Nunes Since Deceased, through his Legal Heir
and another

APPELLANT

Vs

Dr. Subhash S. Kalangutkar and others

RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 100(2), 101, 102

Bombay Tenancy and Agricultural Lands Act, 1947 — Section 71, 72

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 22(2), 58, 59

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 — Rule 9(2)

Goa, Daman and Diu Mamlatdars Court Act, 1966 — Section 4(3), 7

Citation : (1999) 3 BomCR 663

Hon'ble Judges : R.K. Batta, J;N.P. Chapalgaonkar, J

Bench : Division Bench

Advocate : F.E. Noronha, for the Appellant; S.K. Kakodkar, S.A. and R.V. Kamat, for the Respondent

Judgement

R.K. Batta, J.—The eviction of deceased appellant Jose Nunes now represented by his legal heir Diogo Nunes and of appellant Ramakant Vithu Naik was sought by respondent Nos. 1 and 2 on the ground of damages, nuisance and sub-letting u/s 22(2)(b), (c) and (d) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control, Act, 1968 (hereinafter called "the said Act"). The respondent Nos. 1 and 2, who are owners of the suit premises, had leased the suit premises to deceased Jose Nunes, who is alleged to have sub-let the suit premises to appellant Ramakant Vithu Naik. The Rent Controller vide judgment dated 20th November, 1992 ordered the eviction of the appellants on the ground of sub-letting alone. The appeal filed by the appellants before the Administrative Tribunal was dismissed vide Judgment dated 15th March, 1995. The appellants then filed writ petition, which was dismissed by the learned Single Judge. This is

how the appellants have filed the Letters Patent Appeal in question.

2. Learned Advocate Shri F.E. Noronha, appearing on behalf of the appellants, has made before us three submissions, namely:-

(1) The application for eviction was barred by limitation;

(2) Sub-letting was permissible under the Decree 43525 under which the lease was created; and

(3) Valuable consideration for transfer of lease has not been proved.

We shall deal with these submissions one by one.

3. In respect of the first submission relating to limitation, it is urged by learned Advocate for the appellants that the application for eviction is required to be filed within one year of the cause of action and in the instant case the cause of action is stated to have arisen on 24th September, 1980 when the appellants had entered into partnership for the purpose of carrying on business in the suit premises and the application for eviction was filed only in the year 1982, that is to say, beyond a period of one year. In order to bring home his point that the limitation for filing an application for eviction is one year it was urged by learned Advocate for the appellants that section 58 of the said Act empowers the Administrator to make rules in respect of the procedure to be followed and the powers that may be exercised by the Controller, Rent Tribunal, Appellate Board and Administrative Tribunal in the performance of their functions under the Act. In pursuance of the said power to make rules, Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 (hereinafter called "the said Rules") were framed. Rule 9(2) provides that in all inquiries and proceedings commenced on presentation of an application under sub-rule (1) or under any other provisions of the Act or the Rules, the Controller or the Rent Tribunal shall exercise the same powers as the Mamlatdar under the Goa, Daman and Diu Mamlatdar's Court Act, 1966 and shall follow the provisions of the said Act as if the Controller or the Rent Tribunal were a Mamlatdar Court under the said Act and the application presented was a plaint u/s 7 of the said Act. Section 4(3) of the Goa, Daman and Diu Mamlatdar's Court Act, 1966 (hereinafter referred to as "Mamlatdar's Court Act") provides that no suit shall be entertained by a Mamlatdar Court unless it is brought within one year from the date on which the cause of action arose.

4. In addition to the said provisions, learned Advocate for the appellants has placed reliance on a Full Bench Judgment of this Court in Panpoi Dharmal Sansthan Dhotarkherda v. Bhagwant s/o Maroti Dhakulkar and others, 1989 Mh.L. J. 710, wherein it was held that for the purpose of seeking declaration u/s 100(2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 six months period of limitation as prescribed by the Mamlatdar's Court Act, 1906 would apply. The contention of the learned Advocate for the appellants is that section 102 of the Bombay Tenancy and Agricultural Lands (Vidarbha

Region) Act, 1958, section 72 of the Bombay Tenancy and Agricultural Lands Act, 1947 as well as Rule 9(2) of the said Rules is in pan materia and as such the ratio laid down by the Full Bench in Panpoi Dharmal Sansthan Dhotarkherda v. Bhagwant s/o Maroti Dhakulkar and others (supra) is directly attracted in the matter under consideration and as such, the application for eviction in question is liable to be dismissed on the ground that it was filed beyond a period of one year from the accrual of cause of action.

5. As against this submission, learned Senior Counsel Shri S.K. Kakodkar, appearing on behalf of respondent Nos. 1 and 2, urged before us that the question of limitation was never raised by the appellants before any of the fact finding authorities and the same was not even taken as a ground in the writ petition filed before the learned Single Judge and it was only during the course of the arguments in the writ petition that the question of limitation was sought to be raised, which was rightly disallowed by the learned Single Judge. He also urged before us that the said Act in question does not provide for any limitation for filing an application for eviction and it is not permissible under the Rules framed under the Act to provide for limitation on the filing of an eviction application. In support of his submission he placed reliance on Sales Tax Officer, Ponkunnam and another v. K.I. Abraham, A. I.R. 1967 S.C. 1823 and in Rajasthan Trading Co. Vs. The Registrar of Firms and Another, .

6. The cause of action as stated in the application for eviction arose in the year 1981 when it came to the knowledge of the respondent Nos. 1 and 2 that deceased Jose Nunes had sub-let the suit premises to appellant No. 2, who had installed a new workshop equipped with lathe, testers, etc., in the suit premises. It may be pointed out here that deceased Jose Nunes and appellant No. 2 had entered into a partnership for carrying out business in the suit premises which partnership was held to be fake by the fact finding authorities, who further held that it was a case of sub-letting. It was the case of the appellants that they were running business in the suit premises in partnerships since September 1980. No plea of limitation or whisper in that behalf is found in the pleadings of the appellants nor this question was raised before any of the fact finding authorities and it was also not taken as a ground in the writ petition before the learned Single Judge. The question of limitation, in the circumstances, is a mixed question of law and fact and as such the learned Single Judge was perfectly right when he did not permit the appellants to raise this issue before him. Learned Advocate for the respondent Nos. 1 and 2 relying upon the Judgment of the Apex Court in Ittavira Mathai Vs. Varkey Varkey and Another, has urged before us that being a mixed question of fact and law, it could not be raised for the first time during the course of arguments in writ petition before the learned Single Judge and in case the limitation issue had been taken up before the fact finding authorities, the respondent Nos. 1 and 2 could have placed on record further details in that behalf. The contention of learned Senior Counsel is well founded and we are of the opinion that the learned Single Judge had rightly not permitted the appellants to raise the issue of limitation for the first time before him.

7. In view of these findings, though it may not be strictly necessary to deal with the question as to whether period of limitation as prescribed u/s 4(3) of the Mamlatdar's Court Act would apply to the filing of eviction application, yet, since this issue has been agitated before us and is being raised before the authorities, we deem it necessary to deal with the same. Besides the provisions contained in the said Act and the said Rules, learned Advocate for the appellants has placed reliance on a Full Bench decision of this Court in Panpoi Dharmal Sansthan Dhotarkherda v. Bhagwant s/o Maroti Dhakulkar and others (supra). In that case the Full Bench was dealing with provisions contained in the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 and more particularly section 102 which is in pari materia to section 72 of the Bombay Tenancy and Agricultural Lands Act, 1947. Section 102 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 reads as under:-

"102. In all inquiries and proceedings commenced on the presentation of applications u/s 101 the Tahsildar or the tribunal Shall exercise the same powers as the Mamlatdar's Court under the Mamlatdar's Courts Act, 1906, and shall save as provided in section 36 follow the provisions of the said Act., as if the Tahsildar or tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act. In regard to matters which are not provided for in the said Act, the Tahsildar or the tribunal shall follow such procedure as may be prescribed by the State Government. Every decision of the Tahsildar or the tribunal shall be recorded in the form of an order which shall state the reasons for such decision."

Section 72 of the Bombay Tenancy and Agricultural Lands Act, 1947 reads as under:-

"72. Procedure.---In all inquiries and proceedings commenced on the presentation of applications u/s 71 the Mamlatdar or the tribunal shall exercise the same powers as the Mamlatdar's Court under the Mamlatdars' Court's Act, 1906, and shall (save as provided in section 29) follow the provisions of the said Act as if the Mamlatdar or the tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act. In regard to matters which are not provided for in the said Act. The Mamlatdar or the tribunal shall follow the procedure as may be prescribed by the (State) Government. Every decision of the Mamlatdar or the tribunal shall be recorded in the form of an order which shall state reasons for such decision."

In the Act under consideration before us, there is no provision like section 102 or section 72 and it is only that a somewhat similar provision is found under Rule 9(2) of the said Rules. The said Act does contain provisions relating to limitation in respect of filing of appeals and revisions in sections 45 and 46 of the said Act but it does not contain any provision in relation to limitation in case of filing of eviction application is concerned. The Act also prescribes in section 3 that it will not apply to certain buildings and in case of new buildings for a period of 15 years. It also prescribes time limit for making deposits. The Rules which are

framed under the Act are for the purpose of carrying out the purposes of the Act and, in our opinion, learned Senior Counsel for respondent Nos. 1 and 2 is right in his contention that the Rules cannot prescribe limitation which is not provided under the Act. We are in agreement with him that the rule making power does not authorise the rule making authority to prescribe time limit for filing the eviction application and, therefore rule of limitation in Mamlatdar's Court Act cannot be read in Goa Rent Act by implication.

8. Moreover, the Full Bench ruling upon which reliance has been placed by the appellants had taken into account internal evidence available u/s 102 itself which is referred to in paragraph 11 of the said Judgment as well as the oblique method resorted by the landlords to seek summary eviction of tenant by taking recourse to the proceedings for seeking negative declaration u/s 100(2) in the absence of there being no specific limitation prescribed for the said applications. The ratio laid down by the Full Bench, therefore, is not attracted insofar as the Act under consideration before us is concerned. We have referred to the Full Bench Judgment only with reference to its applicability to the Act under consideration and, in our opinion, the ratio of the Full Bench Judgment cannot be applied to the Act in question.

9. Besides this, section 4(3) of the Mamlatdar's Court Act deals with the situations in respect of which the party affected is required to approach for seeking remedy promptly in respect of which immediate relief is sought. It is in this background that one year's limitation from the date of cause of action is prescribed in the suit before the Mamlatdar. Moreover, restricted meaning to cause of action has been given in section 4(4) of the Mamlatdar's Court Act for the purpose of the Act. Accordingly, the provision of section 4 of the Mamlatdar's Court Act cannot be imported into the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 by having resort to Rule 9(2) of the said Rules.

10. In view of the above, we find no merit in the submission of the learned Advocate for the appellants that for filing an application for eviction, limitation of one year would apply.

11. In respect of the second contention raised by the learned Advocate for the appellants is concerned, it may be pointed out that Repeals and Savings u/s 59 reads as under:-

"59(1) As from date on which this Act is brought into force in any local area, the provisions of Decree No. 43525, dated the 7th March, 1961, and Legislative Diploma No. 1409, dated the 14th February, 1952 and the corresponding provisions of any other law for the time being in force shall stand repealed in that area.

(2) Notwithstanding the repeal of the laws by sub-section (1), all suits and other proceedings under a repealed law pending at the commencement of this Act before any Court or authority shall be continued and disposed of in accordance

with the provisions of the repealed law as if that law had continued in force and this Act had not been passed:

Provided that in any such suit or proceeding for the fixation of fair rent or for the eviction of a tenant from any building, the Court or other authority shall have regard to the provisions of this Act;

Provided further that the provisions for appeal under the repealed law shall continue in force in respect of suits and proceedings disposed of thereunder."

Besides this, the sub-lease in question was created after the said Act came into operation which prohibits sub-letting without written consent of the landlord and as such there is no merit in this submission of the learned Advocate for the appellants.

12. Insofar as the third submission is concerned it was urged by learned Advocate for the appellants that the respondent Nos. 1 and 2 have failed to prove valuable consideration for the purpose of sub-letting. The evidence on record as reflected in paragraph 6 of the Judgment dated 15th March, 1995 of the Administrative Tribunal is that the first appellant had issued receipts of rent to the second appellant for Rs. 75/- per month for the suit premises, which certainly is the consideration for sub-letting. The contention of the learned Advocate for the appellants that the consideration should have been more than Rs. 75/- per month on which the first appellant had taken the lease is without any merit whatsoever.

13. For the aforesaid reasons, we do not find any merit in this appeal and the appeal is hereby dismissed with costs.

14. Appeal dismissed.