

(2000) 10 BOM CK 0023

In the Bombay High Court

Case No : Contempt Petition No. 339 of 1999 with Civil Application No. 1731 of 2000

Shri Shriniwas R. Shelar

APPELLANT

Vs

Girish Kanhaiyalal Oswal

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 16, 17B

Constitution of India, 1950 — Article 215

Citation : (2001) 2 BomCR 12 : (2001) 1 BOMLR 47 : (2001) 1 MhLj 541

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

Bench : Single Bench

Advocate : Mr. M.D. Pokale, for the Appellant; Mr. G.R. Rege and S.M. Railkar, for the Respondent

Judgement

D. G. Deshpande, J.—The contempt petition is filed by the tenant and civil application is filed by the landlord. (For the sake of convenience the parties herein after referred to as the landlord and the tenant). Following is the background of the contempt petition and the civil application.

2. The landlord had filed a Regular Civil Suit No. 236 of 1991 against the tenant before the Civil Judge, Junior Division, Ratnagiri for recovering possession of the suit premises u/s 13(1)(hh) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (herein after referred to as the Bombay Rent Act). The landlord succeeded in the suit and got a decree. The tenant preferred an appeal before the District Judge, Ratnagiri, but the tenant's appeal was also dismissed by the District Judge, Ratnagiri by an order dated 4.12.1995. The tenant then filed a Writ Petition No. 482 of 1996 against the landlord and against two consecutive orders passed by the Civil Judge, Junior Division, Ratnagiri and the District Judge passed against him.

3. The Writ Petition No. 482 of 1996 of the tenant came up for hearing before

Justice P. S. Patankar and on 20.2.1996 Justice P. S. Patankar refused to interfere in the orders passed against the tenant. However, Justice P. S. Patankar noted that the landlord has given undertaking as contemplated by Section 13(3A) of the Bombay Rent Act and he had also given undertaking to the High Court which was marked as "X" and accepted. At that time the tenant through his Advocate told the Court that the premises in his occupation were of 10" x 20". He, therefore, asked for time to vacate the premises. The tenant has given undertaking through his Advocate to vacate the premises and the tenant was granted three months time to vacate the premises. At that time Advocate for the landlord made a statement before the Court across the bar that the tenant will be given round about the same area in new building. Subject to this, this petition was rejected by Justice P. S. Patankar.

4. According to the tenant, thereafter he wrote number of letters to the landlord to put the tenant in possession of newly constructed suit premises, i.e. an area approximately 10 ft. x 20 ft. in the newly constructed building. The landlord in spite of 3/4 notices did not reply. Hence the tenant filed the contempt petition praying therein for action against the landlord under Article 215 of the Constitution and sending him to Civil Prison etc. The contempt petition of the tenant came up before Justice H. L. Gokhale on 19.8.1999 wherein the tenant's Advocate read deposition of Girish Oswal at Exhibit 56 in Suit No. 236 of 1991 wherein Girish Oswal i.e. the landlord admitted that he has filed undertaking and he will abide by the provisions of law; that the alternate premises has been properly shown in the map Exhibit 54 and the proposed premises is having height of 14 feet. Mr. Rege appearing for the landlord stated at that time before Justice H. L. Gokhale that if such alternate premises are kept vacant, they will remain vacant until the matter is further heard.

5. Thereafter the matter came up for hearing before me on 11.2.2000 when nobody appeared for the landlord and I passed an order to place the tenant in possession of the alternate premises from the newly constructed building viz. Shanti Complex. This order dated 11.2.2000 was executed through the Superintendent of Police and the tenant was placed in possession.

6. Thereafter the landlord filed this Civil Application No. 1731 of 2000 for vacating the ex parte order, for hearing the petition on merits and for restoring the possession of the suit premises.

7. It is in this back ground I heard the contempt petition and civil application. The contempt petition was admitted by me on the date of hearing itself and on that day the matter was heard on merits regarding contempt petition and civil application.

8. Mr. Rege appearing for the landlord took strong objection to the conduct of the tenant and his Advocate and he contended that the tenant or his Advocate did not point out certain material facts to me when I passed the order on 11.2.2000. According to Mr. Rege, since the tenant has filed contempt petition, the landlord

gets right to bank upon technicalities or super technicalities and if the landlord succeeds in proving these defences then he is entitled for the prayers in the civil application.

9. It was further contended by Mr. Rege that firstly the landlord has not given any undertaking either to the Trial Court or to the High Court about accommodating the tenant or giving equivalent premises to the tenant in the new building; that the statement of the Advocate of landlord recorded by Justice P. S. Patankar (as stated above) did not amount to any undertaking; that on the contrary the tenant had given undertaking to Justice P. S. Patankar to vacate the premises within three months, but the tenant did not keep his undertaking and the landlord had to get possession of the old premises by starting execution proceedings. The landlord got the possession after expiry of the period of three months as per the undertaking given by the tenant to Justice P. S. Patankar, and therefore, the tenant has lost all his rights to get back the premises in new building. Mr. Rege also pointed out that the landlord received notices given by the tenant but since the tenant has committed default in handing over the possession as per the undertaking, the landlord was advised not to give reply to any of the notices. He also contended that there was no obligation on the landlord to hand over the possession to the tenant in newly constructed building either under law or under any undertaking and since in his notice the tenant has not agreed to pay standard rent and to comply with the provisions of Section 17B(hh) of the Bombay Rent Act, the tenant was not entitled to get back the possession.

10. He further contended that if at all in the alternative, the landlord has committed any contempt then action was initiated by the tenant for the contempt against landlord one year after the alleged contempt and therefore contempt petition was barred by limitation. Mr. Rege, in support of his aforesaid submissions relied upon three judgments viz. Ram Nath and another v. M/s. Ram Nath Chhittar Mal,; Laxman Dattatraya More and others D. Manohar Namdeo Konde, and Golchha Advertising Agency v. State of Maharashtra and another.,

11. As against this it was contended by counsel for the tenant that the landlord had given undertaking before the Trial Court as required by law and had also given undertaking to this Court before Justice P. S. Patankar. He also contended that the tenant had vacated the premises, though there was a delay on the part of the tenant on account of misunderstanding and delay in itself does not result in tenant relinquishing his right in the newly constructed building or tenant not getting alternate premises in the newly constructed building. He further contended that there was no delay in filing the contempt petition and it was filed within time i.e. within one year of getting intimation from the concerned municipality about the completion of the new building by the landlord. He therefore contended that the contempt petition was liable to be made absolute and civil application of the landlord was liable to be dismissed. He however did not pray for any serious action against the landlord for the contempt of the

Court, but contended that the Court may pass suitable order considering the fact that the tenant had been placed in possession.

12. I have given my anxious consideration to the submissions made by both the Advocates. Before appreciating the submissions made by Mr. Rege it is necessary to take note of the back ground giving rise to this contempt petition.

Admittedly, the suit that was filed by the landlord was u/s 13(1)(hh) of the Bombay Rent Act. Copy of the plaint is filed with the main petition on record page 44., In the plaint the landlord has averred that he has obtained necessary certificate u/s 13(3B) of the Bombay Rent Act and also fulfilled other requirements. Apart from that the landlord has stated in the plaint that even if a building is demolished, the interest of the tenants are going to be protected fully and he is going to get his right in the newly constructed building as per protection provided u/s 13(1)(hh) of the Bombay Rent Act. He has also stated that there was a talk of mutual settlement between him i.e. the landlord and other tenants but since the talk did not materialize, he was required to file a suit.

13. Section 13(3A) requires landlord to file a suit u/s 13(1)(hh); to produce a certificate granted by the Tribunal and also give an undertaking to the Court to the effect that the new building to be erected by him shall be subject to the provisions of any rules by laws or regulations made by a local authority, containing not less than two times the number of residential tenements, and not less than two times the floor area, contained in the premises sought to be demolished; that the work of demolishing the premises shall be commenced by him not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and that the work of erection of the new building shall be completed by him not later than fifteen months from the said date. This section also empowers the Court to extend the period not exceeding three months at a time but total extension period shall not be twelve months in the aggregate.

14. Section 17A of the Bombay Rent Act provides that where a decree for eviction has been passed by the Court on the ground specified in clause (hh) of sub-section (1) of Section 13 and the demolition has not been started, then tenant can give notice to the landlord of his intention to occupy the premises from which he was evicted and if the landlord does not deliver back the possession, the tenant can seek aid of the Court.

15. Section 17B of the Bombay Rent Act gives right to the tenant to give notice to the landlord of his intention to occupy a tenement in the new building.

Section 17C of the Bombay Rent Act enjoins upon landlord to intimate the tenant about the date on which erection shall be completed and on such date the tenant will be entitled to occupy the tenement assigned to him by the landlord.

It has to be noted that sections 17A and 17C make it clear that if the landlord fails to comply with these provisions, he shall be punishable with imprisonment

or fine or with both.

16. It is clear from the aforesaid provisions that the Legislature made full proof arrangement in protecting interest of the tenant whose premises are sought to be demolished by landlord for the purpose of constructing new building and has also made stringent provisions to seek compliance of the obligation of landlord by making default of the landlord punishable with imprisonment or fine.

17. In the instant case i.e., in the suit filed by the landlord before the Trial Court, i.e. Civil Judge, Junior Division, Ratnagiri the landlord has complied with the provisions of section 13(3B) and has specifically pleaded as quoted above that the tenant's interest will be fully protected and he will give necessary undertaking. In his evidence before the Trial Court the landlord has stated that he will give undertaking and he will abide by the provisions of law and the tenant would not suffer any loss if evicted from the suit premises. The landlord succeeded in the Trial Court and also before the Appellate Court. It means that the landlord got a decree for eviction of the tenant from the suit premises, but that was for reconstruction of the building and redelivery of area equivalent to the tenant. In view of this fact, the landlord cannot be permitted to contend that he was under no obligation to provide accommodation in the new building to the tenant.

18. Mr. Rege further contended that there was no undertaking given by the landlord either before the Trial Court or before the High Court that he will provide alternate accommodation to the tenant in new building and therefore, according to Mr. Rege, there is no breach of undertaking by landlord and consequently no contempt. This submission is without any basis and against the record and it has to be simply rejected. It is a matter of fact that the tenant has filed a Writ Petition No. 482 of 1996 before this Court challenging both the orders of Trial Court as well as the Appellate Court in the suit filed by landlord for eviction u/s 13(1)(hh) of the Bombay Rent Act. It is an admitted fact that this writ petition came up for hearing and heard by Justice P. S. Patankar and an order came to be passed on 20.2.2000 though Justice Patankar refused to interfere with the findings of both the Courts below. It was recorded by him that the landlord has given undertaking as contemplated by Section 13(3A) of the Bombay Rent Act, and in addition, he has also given an undertaking to this Court which is marked "X" for identification. Justice Patankar also noted the statement made by Advocate for the landlord that the petitioner shall be given round about the same area in new building. It may be that Justice Patankar did not use word "Undertaking" given by landlord for providing accommodation to the tenant in new building, but considering all the back ground of this case and statutory provisions, if Justice Patankar has recorded the statement of Advocate for the landlord that landlord will give to the tenant round about the same area in new building, his statement itself is and has to be accepted as Undertaking. Because it was a statement made by the landlord's Advocate to this Court, therefore, providing alternate accommodation to the tenant in new building is not the

statutory obligation on the landlord but it is an obligation upon him because his very suit was for that purpose; in his evidence he has agreed; in his pleading he has stated and in all the steps taken by him were only for the purpose of evicting the tenant so as to construct a new building and to give near about equal accommodation to the tenant. The statement made by his Advocate before this Court i.e. before Justice Patankar is in continuation of legal and statutory obligation and all his evidence and pleadings, and therefore, that statement is undoubtedly an Undertaking. The submission made by Mr. Rege that the landlord has not given any undertaking has to be rejected.

19. Mr. Rege also contended that the undertaking given to the Trial Court or at the time of institution of suit u/s 13(1)(hh) does not speak about handing over possession to the tenant in newly constructed building. In fact such an argument cannot be permitted to be advanced because that is against specific provisions of the Bombay Rent Act as quoted above vis-a-vis the landlord's suit was for eviction on the ground of demolition and reconstruction of the premises. Undertaking given by the landlord u/s 13(3A) is an undertaking in continuation of the proceedings and it is a part of the process started by the landlord u/s 13(1)(hh). If the landlord did not give such undertaking u/s 13(3A) of the Bombay Rent Act, he cannot proceed with his suit and nor can institute such a suit. Once it is concluded that the landlord has given undertaking and was legally bound to deliver possession to the tenant after construction of building then little remains in this matter because admittedly the landlord did not keep his undertaking and did not put the tenant in possession. It was contended by Mr. Rege that the tenant gave an undertaking to this Court that he will vacate the premises within three months but the tenant did not keep his undertaking and landlord had to take possession of the premises by starting execution proceeding and therefore, there was delay of four months on the part of the tenant in giving possession and consequently tenant has lost his right to get back the possession in the newly constructed building.

Mr. Rege relied upon judgment of the Supreme Court in *Ram Nath v. Ram Nath Chhittar Mal*. This judgment is required to be distinguished from the facts of the present case because it is based on provisions of Section 15 of the Delhi and Ajmer Rent Control Act (XXXVIII of 1952] which provides: -

"The Court shall, when passing any decree or order on the grounds specified in clause (f) or clause (g) of the proviso to sub-section (1) of Section 13 ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election in the decree or order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or rebuilding as the case may be.

(2) If, the tenant delivers possession on or before the date specified in the decree or order, the landlord shall, on the completion of the work of repairs or building or rebuilding place the tenant in occupation of the premises or part

thereof.

(3) If, after the tenant has delivered possession on or before the date specified in the decree or order the landlord fails to commence the work of repairs or building or rebuilding within one month of the specified date or fails to complete the work in a reasonable time or having completed the work, fails to place the tenant in occupation of the premises in accordance with sub-section (2), the Court, may, on the application of the tenant made within one year from the specified date, order the landlord to place the tenant in occupation of the premises or part thereof on the original terms and conditions or to pay to such tenant such compensation as may be fixed by the Court."

The Supreme Court while quoting this section in its judgment held in paragraph 5 that as the respondents-tenant did not deliver possession to the appellants on or before the dates specified in the decree the provisions of Section 15 contained in sub-section (3) of that Act were not available to them and they were not entitled to be put into possession as prayed by them. There is analogous provisions in the Bombay Rent Act by virtue of section 16. However, section 16 applies only when the Court passes a decree on the ground specified in clause (h) of sub-section (1) of section 13 which is, the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated.

20. It is an admitted fact that the landlord in the instant case did not seek eviction of the tenant u/s 13(1)(h) but he sought eviction u/s 13(1)(hh). So far as section 13(1)(hh) is concerned, there is no provision in the Bombay Rent Act similar to section 16 of the Bombay Rent Act or section 15 of the Delhi and Ajmer Rent Control Act. It cannot therefore be said that because tenant failed to give possession within three months as per his undertaking to this Court, he lost his right to get back the possession in the newly constructed building.

21. Mr. Rege further submitted that firstly the landlord was not guilty of contempt because he has not given undertaking, and secondly, even if undertaking was given by the landlord, initiation of contempt proceeding was not the remedy because under these proceedings this Court has no power to hand over the possession of premises to the tenant and only course available to the tenant was to file a civil suit for enforcement of the undertaking, and that, contempt petition was barred by limitation.

22. None of the submissions has any legal force because I have already observed and held that the statement made by the Advocate for the landlord before Justice Patankar is nothing but an undertaking. Secondly if a litigant through his Advocate gives an undertaking to this Court it cannot be said, as has been done by Mr. Rege, that for enforcement of the undertaking this Court has no power, it must ask the aggrieved party to file civil suit. If a party has given undertaking to this Court, and it is accepted then the Court has ample powers to see that the party acts as per the undertaking. In the contempt petition the tenant has

prayed for appropriate orders for placing him in possession in the newly constructed building.

23. So far as question of limitation is concerned, according to Mr. Rege, the undertaking or statement of the Advocate for the landlord was recorded by Justice Patankar on 20.2.1996 and the contempt petition is filed by the tenant on 2.8.1999. Therefore, according to Mr. Rege, even if it is accepted that the tenant was informed by Municipal Council about completion of building, the contempt petition is barred by limitation u/s 20. This argument has to be rejected because in the undertaking given by the landlord to Justice Patankar no time limit is fixed by him for giving accommodation to the tenant in newly constructed building. Therefore, till the premises are given to the tenant in the newly constructed building, there is continuing contempt on the part of the landlord. Possession was not given to the tenant in the newly constructed building till filing of the complaint, and therefore, period of limitation would not start as alleged by Mr. Rege and at any rate the period of limitation would be running against the landlord on every day including first of August, 1999 i.e. the day preceding filing of the contempt petition. Thereafter the contempt petition came for admission before Justice H. L. Gokhale on 19.8.1999 and on 11.2.2000 I passed the impugned order putting the tenant in possession. That order dated 11.2.2000 is passed within one year of filing of the contempt petition.

24. It was also urged by Mr. Rege that the tenant cannot get back the possession of the rooms in that building because tenant did not agree to give standard rent as required by Section 17(B) of the Bombay Rent Act. I do not find any force in this argument because the tenant had given three notices to the landlord for delivering possession in the building. But the landlord did not care to give reply to any of them under the purported advice to disregard those notices.

25. For all the reasons stated above the contempt petition is required to be allowed and made absolute. However, I do not propose to take any action against the landlord for the contempt as rightly prayed for by the counsel for the tenant because tenant has been placed in possession of the property. Consequently, Civil Application No. 1731 of 2000 filed by the landlord for setting aside ex parte order dated 11.2.2000 and for other consequential reliefs is also required to be dismissed. Hence I pass the following order : -

ORDER

26. Contempt Petition No. 339 of 1999 is allowed.

27. However, since the tenant has been placed in possession, no penal action is found necessary against the landlord/respondent. Needless to say that the tenant will pay standard rent to the landlord from the date he got possession in the premises of the new building pursuant to the order of the Court within three months of this order and go on paying rent regularly. For fixation of standard rent the tenant has to take any legal step. He will take the step within three months.

28. Civil Application No. 1731 of 2000 is dismissed.

29. Certified copy expedited.