
(2017) 11 BOM CK 0043
In the Bombay High Court
Case No : 5645 of 1996

Shri Zopadi Ramdeo Mandir & Anr

APPELLANT

Vs

B Mohanlal & Brothers & Ors

RESPONDENT

Date of Decision : 02-11-2017

Acts Referred:

[Bombay Rent Act, 1947](#), Section 5(3)

Citation : (2017) 11 BOM CK 0043

Hon'ble Judges : G.S. Patel

Bench : SINGLE BENCH

Advocate : SB Deshmukh, PB Shah

Judgement

1. The Petitioner is the landlord trust. It challenges in this Writ Petition, one that was admitted on 6th June 1997, the decision dated 9th February 1988 of the Additional District Judge, Pune in Civil Appeal No.931 of 1985. That appellate order resulted in a dismissal of the Civil Appeal and the confirmation of the order dated of 18th August 1984 of the 2nd Additional Small Causes Judge, Pune dismissing the Writ Petitioners' eviction Civil Suit No.1621 of 1980. I will refer to the parties as plaintiffs and defendants.

2. Plaintiff No.1 is a public trust. Plaintiffs Nos.2 to 4 and Defendants Nos.3 and 4 are the trustees. The property in question is at Ravivar Peth in Pune. The case of the Petitioners were that the 1st Defendant to the suit, one M/s B Mohanlal and Brothers, were the original tenants. According to the Plaintiffs, the 1st Defendant unlawfully sublet the premises, which are commercial in nature, to the 2nd Defendant, M/s Modi and Company. The Trial Court framed nine issues after pleadings were complete. The Trial Court, by its order and judgment dated 18th August 1984 held in favour of the Defendant and dismissed the suit.

3. The Plaintiffs appealed. The Appeal Court framed six points for determination.

4. The first of these was whether PW-1 SR Pande was properly authorised to file a suit for possession. On this, the Appellate Court held that he was not and

consequently on the question of whether a suit was "tenable" held that this question would not survive. Once it was found that a particular person lacked the authority to file the suit for want of an appropriate resolution, the consequential issue could not be said to not survive. In any case, the decision of the Appellate Court on the issue of maintainability is unsustainable. What the Appellate Court overlooked is that all the trustees were party Plaintiffs to the suit and Defendants Nos.3 and 4 were the other trustees (and perhaps could not be joined as co-plaintiffs for purely technical reasons; no reliefs being claimed against them). Once all the trustees were joined to the suit, it was wholly immaterial whether any particular person was or was not authorised to sign the plaint. If not properly done, that was at best a curable irregularity, one that could be ratified by the trustees, all before the court. In any case, even going by the definition in the Maharashtra Rent Control Act previously the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the Bombay Rent Act, 1947"), which would have applied at that time, in regard to a trust, a landlord or owner would necessarily include the trustees. The word "trustees" is specifically used in the definition in Section 5(3) of the Bombay Rent Act, 1947. The finding of the Appellate Court on this aspect of the matter is clearly erroneous. However, as it happens, this will not materially affect the decision on merits.

5. Points 3 and 4 before the Appellate Court were, respectively, whether the Plaintiffs proved (i) that the 1st Defendant was in arrears of rent from 7th June 1974 for more than six months; was not ready and willing to pay the standard rent; was a wilful defaulter; and (ii) whether the Plaintiffs proved that Defendant No.1 had unauthorisedly and illegally sublet the premises to Defendant No.2.

6. As to the first of these, it is in three parts. The first requirement is to show, as a matter of fact, that there are arrears of rent and that these arrears extend for more than six months. The second ingredient to be proved is that the Defendant or Defendants are not ready and willing to pay the standard rent. The third component is to establish that the Defendants sought to be evicted are wilful defaulters. All three ingredients must be established. The facts however show that this burden was never properly discharged by the Plaintiffs. The Plaintiffs served notice on 9th December 1977 on Defendant No.1. It replied on 11th January 1978 stating that it stood dissolved in 1958, some 20 years earlier. In the interregnum, rent had been paid to one Sitaram Mundada. Now this Sitaram was not a rent collector or an agent. Admittedly, he was actually a trustee of the 1st Plaintiff trust. It does not seem to be disputed that Sitaram did in fact collect rent from not only these tenants but other tenants too. Before the Court, the tenants led evidence that rent had been paid to Sitaram. It is also matter of record that it was Sitaram who brought Civil Suit No.447 of 1962 on behalf of the trust and it was for that reason that the Defendants paid rent to him. It seems that Sitaram and the trust fell out. Sitaram was removed from the trust. He was not a trustee from 7th June 1974. Unfortunately, nobody told the tenants this. It was argued before the Appellate Court, as it is before me - though not with any great enthusiasm - that since there was a change report filed before the Charity

Commissioner, all tenants must be "deemed to have known" of Sitaram's removal, and that it was unnecessary for anybody on behalf of trust to inform the tenants that they should remit the rent month on month to some other person or directly to the trust. Of this submission, perhaps the less said the better. In my view, it needs only to be stated to be rejected.

7. As to the question of readiness and willingness, the Court itself recorded that the tenants were willing to make that payment. Mr Deshmukh on behalf of the Plaintiffs urges that the tenants should have been found to be defaulters because they offered to pay only from the date of the notice. That is also a submission I cannot accept. This is for the simple reason that according to the tenants they had, until then, made regular payment to Sitaram Mundada. What he did with that payment was a matter between him and the trust and was of no concern whatsoever to the tenants. Thus, on both the first two crucial ingredients, and, resultantly, the third ingredient regarding wilful default, there could be said to be no case made out in favour of the Plaintiffs. The Appellate Court was therefore correct in its finding on this aspect of the matter.

8. The fourth point, as I have noted, dealt with the question of unlawful subletting. Here, the story is even more curious. The 1st Defendant was the original tenant, a partnership firm. It was doing business from the suit premises from 1943. The firm, M/s B Mohanlal & Brothers, was dissolved in 1958. Mohanlal's sons and other partners reconstituted themselves into a partnership in the name of the 2nd Defendant, M/s Modi & Company. The tenants claimed, therefore, that it was in fact the 2nd Defendant that was actually the tenant from 1943. Even if that is not correct, what is absolutely and unquestionably determinative is that, as a matter of record, the Plaintiffs accepted rent from the 2nd Defendant, and they did so not under protest, or without prejudice, or subject to any qualification or condition. The Appellate Court noted the oral evidence of the Defendant to prove these facts. Some 72 documents were filed and these were duly noticed. I do not believe it is open to the Plaintiffs to say that their acceptance of rent from the 2nd Defendant should count for nothing only because the original contract of tenancy in 1943 was with the 1st Defendant.

9. In my view, and having carefully considered all the material and record, the Appellate order calls for no interference. Rule is discharged. There will be no order as to costs.