

(2012) 06 BOM CK 0093

In the Bombay High Court

Case No : Civil Revision Application No. 569 of 1991

Shrirang Harikishan Agrawal

APPELLANT

Vs

M/s. Asha Electric Stores, Latur and M/s. Ramkrishna Printing Press

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Citation : (2012) 6 ALLMR 186 : (2012) 6 MhLj 694

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : S.B. Agrawal, for the Appellant; S.S. Bora, Advocate H/f Mr. S.C. Bora, for the Respondent

Judgement

S.S. Shinde, J.—This civil revision application takes exception to the judgment and order dated 21st December, 1990 passed by the Appellate Court in Rent Appeal No. 13 of 1988. The background facts as disclosed in the civil revision application are as under:

The revision Applicant is the landlord of nonresidential shop premises i.e., suit premises, bearing Municipal No. 59/3 situated at Main Road at Latur. The said premises were given on rent to M/s.Asha Electrical Store, i.e., Respondent No. 1 herein, a sole proprietary concern of Mr.Gopikishan Ramkishan Agrawal. The rent agreed was Rs. 91.75 Ps. per month. According to the revision Applicant, the said rent was payable in advance in each month.

As the Respondent No. 1 - Gopikishan Ramkishan Agrawal committed default in payment of rent for the period between 5th November, 1979 till 5th October, 1980, the revision Applicant filed proceedings for eviction against Respondent No. 1 on the ground of willful default. It is further case of the revision Applicant that, he wanted to start his own business of Kirana shop and he had no non-residential premises in his possession, he also required the said premises for bonafide personal requirements. The revision Applicant served the notice on Respondent No. 1 on 18th July, 1980. Thereafter, it was found that the revision

Applicant is not informed by the Respondent No. 1 of subletting of the premises to one Mr.Mohan Agrawal. The revision Applicant again served a fresh notice on 16th September, 1980 to Respondent No. 1. When the notices were not replied, the revision Applicant filed eviction petition on 18th October, 1980.

2. It is further case of the revision Applicant that, notice of eviction proceedings was served on Mr.Mohan Agrawal for M/s.Ramkrishna Printing Press, Mr.Mohan Agrawal appeared and filed an application stating therein that, he had no right of ownership or interest in M/s.Ramkrishna Printing Press and so he cannot represent M/s.Ramkrishna Printing Press. It is further case of the revision Applicant that, on receipt of that application, orders were passed on 20th April, 1985 for correction of the name of the owner of M/s.Ramkrishna Printing Press and accordingly, the said name was corrected.

Thereafter, the Respondent No. 1 - Gopikishan Ramkishan Agrawal filed his written statement on 25th January, 1983, in paragraph No. 8 of the said written statement, he denied that, Mohan Agrawal has any concern with M/s.Ramkrishna Printing Press. It is further case of the revision Applicant that, in the written statement in paragraph No. 5, no date of payment of rent for the year 1979-80 was pleaded and no property of non-residential nature was pleaded in paragraph No. 6 of the said written statement.

3. When the Rent Controller, Latur conducted an enquiry in the application of the revision Applicant, the revision Applicant had only examined himself as a witness on 3rd September, 1987. On behalf of the Respondent No. 1 - Gopikishan Ramkishan Agrawal, no evidence was recorded. The only evidence recorded by the Rent Controller on behalf of both the Respondents was of one Mr.Mohan Ramkishan Agrawal, who had earlier denied his connection with M/s.Ramkrishna Printing Press. The evidence of Mohan Agrawal was recorded on 7th January, 1988.

4. After recording the evidence and after hearing the parties, the Rent Controller by his judgment dated 2nd June, 1988 allowed the petition filed by the Applicant on the ground of willful default, bonafide requirements and also on the ground of sub-letting the premises and directed the Respondents to vacate the premises within thirty days from the date of passing of the order.

5. Being aggrieved by the said judgment passed by the Rent Controller, the Respondent No. 1 - Gopikishan Ramkishan Agrawal and Mrs.Pushpa Agrawal filed an appeal on 13th June, 1988. The said appeal was heard by the District Judge, Latur and he was pleased to allow the appeal bearing Rent Appeal No. 13 of 1988 by its judgment and order dated 21st December, 1990, thereby setting aside the judgment and order passed by the Rent Controller. Hence, this civil revision application.

6. The learned counsel for the revision Applicant submitted that, there was default in payment of rent for three years by the Respondents - tenants and therefore, notice was given by the revision Applicant on 17th July, 1980 to the

Respondents. It is submitted that, though it is admitted by the revision Applicant in his evidence that, amount towards arrears of rent has been accepted by the revision Applicant, the said amount is accepted only after filing the proceedings before the Rent Controller. It is the submission of the learned counsel for the Applicant, that merely because the Applicant has accepted the amount towards arrears of rent, that by itself is no ground to hold that the Respondents - tenants have paid the arrears towards rent, and therefore, the application cannot be entertained on the ground of default in payment of rent. It is submitted that, it is beyond comprehension that, the Respondents - tenants have not paid rent for three years and the said ground is not available for the landlord for eviction of tenants for default in payment of rent. Therefore, according to the learned counsel for the revision Applicant, the lower Appellate Court has not properly appreciated the facts and evidence brought on record and has recorded perverse findings on the point of default in payment of rent by the tenants and therefore, the judgment and order passed by the District Judge, Latur needs to be interfered.

The learned counsel further submitted that, the revision Applicant wanted the rented premises for running Kirana shop. It is submitted that, when the landlord himself wanted the premises for running his own business, the lower Appellate Court ought to have considered the said contention and should have confirmed the finding of the Rent Controller that, the suit premises are needed for the purpose of running / carrying on his own business by the revision Applicant. The learned counsel invited my attention to the provisions of Section 15 (3) (a)(iii) of the Hyderabad House (Rent, Eviction and Lease) Control Act, 1954 and submitted that, it is not the requirement of the said provision that, the landlord should run or carry on business at the relevant time, when the application is filed on the ground that, the said suit premises are needed for carrying only his own business. Even if the landlord is not carrying on business and if he intends to carry on the business, in that case also, the application of the landlord is required to be considered under the said provisions. Therefore, according to the learned counsel for the revision Applicant, the finding recorded by the lower Appellate Court that, at the time when the application was filed by the revision Applicant - landlord on ground of bonafide personal use of the suit premises for carrying on business, running of actual business or carrying on business is not necessary. According to the learned counsel for the revision Applicant, even if the landlord is not carrying on the business at the relevant time, the said ground that, he requires the said suit premises for carrying on his business is maintainable. According to him, the lower Appellate Court has misread the provisions of Section 15 (3)(a)(iii) of the said Act and reached the erroneous conclusion that, when the application is filed by the revision Applicant, at that time, the Applicant was not running or carrying on his own business and therefore, on that ground, his application cannot be entertained.

It is further submitted that, when notice was given to the Respondents - tenants, the revision Applicant - landlord came to know that, part of the suit premises

was given to M/s.Ramkrishna Printing Press and thereafter, fresh notice was served upon the Respondents. According to the learned counsel for the revision Applicant, giving part of the suit premises for running printing press business amounts to subletting of the premises and on that ground, his application was rightly entertained by the Rent Controller and the lower Appellate Court was not correct in interfering in the findings of the Rent Controller. According to the learned counsel for the revision Applicant, the suit premises were given to the Respondent No. 1 for running electrical shop and therefore, if the suit premises are used for any other purpose than the running electrical shop, that amounts to subletting of the premises and on that ground, the eviction of the Respondents was rightly ordered by the Rent Controller and there was no occasion for the lower Appellate Court to interfere in the findings recorded by the Rent Controller. Therefore, according to the learned counsel for the revision Applicant, this civil revision application deserves to be allowed.

7. On the other hand, the learned counsel for the Respondents would submit that, so far first ground urged by the revision Applicant about default in payment of rent, cannot be sustained, the entire amount towards arrears of rent has been paid by the Respondents - tenants and same is accepted by the Applicant - landlord as stated by him in his examination-in-chief before the Rent Controller. The learned counsel for the Respondents pressed into service the judgment of the Supreme Court in the case of Shrikrishna Oil Mill Vs. Radhakrishnan Ramchandra, and in particular he placed reliance in paragraph No. 8 thereof. Relying upon the said judgment, the learned counsel for the Respondents submitted that, if the arrears towards rent are already paid before commencement of the proceedings before the Rent Controller, on the ground of default in payment of rent, the proceedings should fail on such ground of default in payment of rent since said ground no longer continues.

It is further submitted that, so far bonafide requirements of the landlord for running his business is concerned, the lower Appellate Court relying upon the judgment of the Division Bench, has rightly concluded that, in a case where landlord is already carrying on business and he needs the suit premises for carrying on his business, in that case only application for eviction can be entertained. It is submitted that, admittedly, at the time of filing the application before the Rent Controller for eviction, the revision Applicant was not carrying on any business and therefore, the ground of bonafide requirements of the suit premises was not available to the revision Applicant for eviction of the Respondents - tenants. Therefore, according to the learned counsel for the Respondents, any interference in the finding recorded by the lower Appellate Court on the point of bonafide requirements, needs no interference by this Court.

It is further submitted that, the revision Applicant i.e. landlord has not led any evidence or there are no pleadings in his application that, the premises were sublet by the original tenant to M/s.Ramkrishna Printing Press. It is for the landlord to prove by leading evidence that, part of the premises was sublet by

the Respondents - tenants to M/s.Ramkrishna Printing Press and they are receiving any consideration / rent from the said M/s.Ramkrishna Printing Press. Therefore, according to the learned counsel for the Respondents, the lower Appellate Court after considering the entire evidence on record and also after considering the judgment of the Supreme Court in the case of Duli Chand (Dead) by Lrs. Vs. Jagmender Das, , has rightly set aside the judgment and order passed by the Rent Controller. The learned counsel for the Respondents would submit that, the civil revision application is devoid of any merits and the same may be rejected.

8. I have given due consideration to the rival submissions. Since the lower Appellate Court is the last Court on facts, any re-appreciation of the evidence in revisional jurisdiction is not permissible. This Court has to only see, whether the findings recorded by the lower Appellate Court are in consonance with the evidence brought on record and those are not perverse.

On careful perusal of the judgment of the lower Appellate Court on the plea of willful default in payment of rent, it appears that, the District Court has considered the evidence on record and recorded the findings that, the arrears towards rent have been deposited by the Respondents - tenants with the landlord as admitted by the landlord in his examination-in-chief. Therefore, once that amount towards arrears of rent has been paid by the Respondents - tenants and the landlord has accepted the said amount, in that case, the said ground i.e. willful default in payment of rent, will not be available to the landlord. The Supreme Court in the case of Shrikrishna Oil Mill (supra), in paragraph No. 8 held:

8. We are of the opinion that in the case in hand at the time of filing of the present eviction petition, the landlord had no cause of action as the arrears of rent were paid and accepted by the landlord and, therefore, the petition became infructuous and liable to be rejected. For subsequent default also eviction cannot be ordered in view of the stated legal position and in the absence of any legal provisions in the Act. In view of the above legal position, the contention of the learned Counsel for the respondent has no substance. This contention is also not sustainable in view of the decisions of this Court in S. Sundarama Pillai and Teegala Satyanarayana.

9. In the facts of this case also, the amount of arrears towards rent was paid by the tenants. Therefore, in my opinion, the Appellate Court has rightly negated the contention of the revision Applicant that, there was default in payment of rent and on the said ground, eviction of the Respondents - tenants be ordered.

10. The second point raised by the revision Applicant about the bonafide requirement of the suit premises for his business, has been considered by the lower Appellate Court in detail. Though, the learned counsel for the revision Applicant was at pains to argue that, even if the landlord, and in the present case revision Applicant intended to start his business, in that case also, the

provisions of Section 15 (3)(a)(iii) of the said Act are attracted, is devoid of any merit. This Court had occasion to consider the said provisions in the case of Shantabai alias Jadhavbai w/o. Keshrimal Kabra Vs. Modonlal s/o. Mansukhlal Kabra and another, [1977 The Indian Law Reporters, Bombay Series, 1334]. This Court in the said judgment observed thus:

Evenso, in my opinion, the decision of the learned District Judge must be confirmed, because a plain reading of the said cl. (iii) of sub s. (3) (a) of the Act, leaves no room for doubt in my mind that, in order to attract the applicability of that clause, the landlord must show that he was carrying on some business in presenti for which he did not have any accommodation by way of non residential premises available in his own right. That might happen when, for instance, the landlord is doing his business at his place of residence, or in non residential premises of which he is merely in permissive occupation and to the possession of which he is not entitled as of right. The words, "which he is carrying on" clearly show that it is only when the landlord is carrying on business, but has no other non residential premises available for the same in his own right, that this clause becomes applicable, and the ground of ejectment laid down therein can be said to be made out. It was sought to be contended by the learned advocate for the appellant landlady that cl. (iii) must be construed reasonably as governing, both cases in which a landlord is already carrying on business, as well as cases in which he proposes to start a new business, but, I am afraid, it is impossible to place that construction upon the plain terms of cl. (iii) of sub s. (3) (a) of s. 15 of the Act. To accept that construction would, as the learned advocate for the appellant himself very fairly conceded, involve adding the words, "if any" after the words, "for the purpose of a business" in the said clause. It is a well known rule of construction of statutes that it is only in cases in which a particular legislation cannot be given any meaning without the addition of some words, or when to read it without the addition of those words, would lead to absurd results, that a Court might be justified in reading words into a section. I am not prepared to say that this is a case of that nature for, as already stated above, we do not know what were the local conditions which might have impelled the Legislature of Hyderabad to enact the clause as it is to be found in the Act."

11. Therefore, it follows from the judgment of the Division on the business and he needs suit premises to carry on said business further, in that case only his application can be entertained. In the present case, admittedly, the revision Applicant was not carrying on any business when the application was filed before the Rent Controller. The revision Applicant proposed to start business and for that purpose, he wanted the suit premises. The lower Appellate Court after taking into consideration the judgment of the Division Bench in the case of Shantabai alias Jadhavbai (supra) has taken a view that, if the landlord is already carrying on the business, and if he needs the suit premises for further carrying on the said business, in that case only, the application can be entertained. Therefore, the Appellate Court is right in holding that the revision Applicant was not carrying on any business when the application was filed on the ground of

bonafide requirement to start the business. Therefore, no interference is warranted in the findings recorded by the lower Appellate Court.

12. Coming to the third ground, which is agitated by the learned suit premises is sublet by the Respondents to M/s.Ramkrishna Printing Press is concerned, from careful perusal of the findings recorded by the lower Appellate Court, I find that, the very contention of the Appellant - revision Applicant that, part of the suit premises is "sublet" has not been considered by the Appellate Court. In fact, on the aspect of subletting the premises, the Appellate Court should have called upon the parties to lead the evidence. It appears that, merely because M/s.Ramkrishna Printing Press is run by wife of one of the partners, the lower Appellate Court has reached to the conclusion that the premises are not sublet or possession is not parted to a third person. It is not the correct view taken by the Appellate Court. In fact, on the aspect of subletting, the findings are consciously missing, that amounts to failure of exercising jurisdiction vested in the Appellate Court and therefore, to that extent this Court is of the opinion that, the matter needs to be considered afresh by the lower Appellate Court.

13. In the background of aforesaid discussion, the civil revision ground of willful default in payment of rent and another ground that, the suit premises are required for bonafide purpose for starting the business has been properly considered by the lower Appellate Court and findings rendered thereon are in consonance with the evidence brought on record, therefore, to that extent, this revision application should fail.

The matter is remanded back to the Appellate Court only to consider the third ground raised by the revision Applicant that, there was subletting of the suit premises by the Respondents - tenants to M/s.Ramkrishna Printing Press. It is made clear that on the said aspect, the Appellate Court should consider the plea of the revision Applicant afresh and render the decision thereon. It is needless to clarify that, the parties will be at liberty to lead evidence and put forth their contentions on merits on the said aspect. The civil revision application is partly allowed on above terms and the same stands disposed of.

Rent Appeal No. 13 of 1988 is restored to file only to made clear that, the ground of bonafide requirements and willful default in arrears of rent has been negated by this Court and to that extent the findings recorded by the lower Appellate Court are confirmed.