

(1981) 04 BOM CK 0043

In the Bombay High Court

Case No : Civil Revision Application No. 324 of 1980

Sk. Jameel Ahmad

APPELLANT

Vs

Naseem Gulab Sk. (Smt.)

RESPONDENT

Date of Decision : 29-04-1981

Acts Referred:

Registration Act, 1908 — Section 17

Transfer of Property Act, 1882 — Section 106, 107

Citation : (1981) MhLj 847

Hon'ble Judges : A.N. Mody, J

Bench : Single Bench

Advocate : R.M. Agarwal, for the Appellant; A.H. Vaishnav, for the Respondent

Judgement

A.N. Mody, J.—This civil revision application raises an interesting and rather complicated questions as to the interpretation of provision of Transfer of Property Act, Registration Act and the Hyderabad (House Rent, Eviction and Lease) Control Act, 1954 (hereinafter referred to as "the said Act").

2. The petitioner is the landlord and the original plaintiff before the III Joint Civil Judge, Junior Division, Aurangabad in Small Causes Civil Court Suit No. 204 of 1978 and defendant therein. The amount involved in the suit is only Rs. 144/-. But the consequences of the suit having been decided one way or the other are grave enough to warrant the parties fighting each other and incurring cost, inasmuch as the possible consequence of the decree being one way or the other will give the landlord or not give the landlord a right to evict the defendant tenant. Hence, this matter was argue don both sides at great length.

3. A written rent note dated 4-1-1975 was executed by the respondent on a stamp paper with two witnesses wherein are recorded the terms agreed to between the parties regarding rent and other conditions on which the premises were taken on tenancy by the defendant. The terms contained in the documents are very important and, therefore, it is necessary to reproduce them in detail.

"RENT AGREEMENT

I.N.G. Shaikh w/o Dr. S.S.R. Kadri (Nasim Gulab Shaikh w/o Dr. S. Shamshur Rahman Kadari) age about 40 years. Occupation : Sister in Ghati Medical Hospital, Aurangabad, do hereby execute this rent in favour of Shri Jameel Ahmed s/o Shaikh Farid r/o Aurangabad (owner of the premises).

1. That I have taken on rent a whole house bearing Municipal No. 2. 1-13 situated at (Kachiwada) at Rs. 120/- (Rupees one hundred and Twenty only), boundaries of which are : To the East : House of Memondbai w/o Wali Mohamed. To the West House of Azam Khan. To the North : House of Zahara Sultana. To the South : Public way.

2. I have taken the said house for my own use and enjoyment for eleven months w.e.f. 1-1-1975 upto 30-11-1975 on the following terms and conditions.

3. That I will not sub lease the said house to any other person nor I will hand over the possession of the said house to any other persons.

4. That I will pay the rent of the said house at the end of each calendar month.

5. I will keep the house in a good and perfect condition. The minor repairing of the house, white wash and cleaning of flash, drainage, will be carried out with my own expenses and the same will not be deducted from the monthly rent payable to you.

6. That I will not be entitled to construct or major repair of the house for necessity with a written permission of the landlord.

7. That the light and the water charges will also be paid by me and the same also will not be deducted from monthly rent payable to you. You will also be entitled to 20% increase in the monthly rent after every three years.

8. That you will have right to enter in the house for the Inspection purposes etc. and I will have no objection for the same and I will allow access to person deputed by you for the inspection purposes.

9. That I will vacate the house at the expiry of the aforesaid period of eleven months and if I will desire to vacate the premises prior to the expiry of the period of eleven months mentioned above, I will inform to the landlord one month before in written.

Hence this rent agreement.

This 4th day of January, 1975.

Tenant.

Sd/ in English G.S. Shaikh.

1. Witness : Ismail Khan.

2. Witness : Zahur Mohammad".

4. The period of three years mentioned in the agreement expired in December 1977 and the plaintiff addressed a letter to the defendant demanding increased rent which claim was disputed by the defendants by his Advocate letter dated 7-2-1978 and 14-3-1978. As a consequence of this correspondence and dispute the present suit came to be filed. The learned trial Judge after considering the contentions of the parties dismissed the suit on the ground that the rent note required registration and being unregistered was inadmissible in evidence for the purposes of determining the rent payable. An appeal filed against this dismissal order was dismissed on the ground that on true construction of the agreement the agreement continued only for a period of 11 months and thereafter became ineffective and consequently the stipulation regarding the increased rent after the expiration of the period of three years did not continue to apply. While dismissing the appeal it was held that this rent note did not require registration.

5. Mr. R.M. Agrawal has attacked this finding of the Appellate Court on the interpretation of the agreement. Mr. Vaishnav for the respondent supported the judgment on the ground on which it was decided had by contending that this rent note required registration and in the alternative that the agreement as to enhancement was contrary to the provisions of section 12(2)(a) of the aforesaid Hyderabad Rent Act.

6. As regards the point of registration the real nature of the said rent note required consideration as also the period for which the lease was granted. If the said rent note grants lease for more than one year, it requires registration under the Registration Act as also u/s 107 of the Transfer of Property Act. However, if the lease is granted for a period of one year or less, no registration is necessary. In case the lease is for the period of more than one year it has to be in writing and registered, and it would be invalid even when the terms thereof may have been recorded in a subsequent rent note with the consequence the defendant would continue to occupy the premises only as a monthly tenant under the provisions of section 106 of the Transfer of Property Act.

7. Now the clause of the agreement show that the said agreement only records what was initially orally agreed at that time of giving of the lease which was given on 1-1-1975. Consequently, though the rent note contains all the terms agreed to between the parties it, itself is not a document creating lease or granting lease, hence the writing itself does not require any registration by reason of the provisions of Registration Act.

8. Clause 2 of the said writing mentions the agreed period of lease as 11 months and Clause 9 states that the defendant will vacate the house at the expiry of the period of 11 months. It is, therefore, clear that the agreement is to remain current only for a period of 11 months. Clause 7 of the agreement mentions that the landlord will be entitled to increase by 20 per cent the monthly rent after every three years. The only meaning that can be attribute to this Clause 7 is that

in case by consent of parties, the period of lease is extended beyond 11 months as also beyond a period of three years then the landlord will be entitled to charge 20 per cent increase in the monthly rent but not more. I am supported in the view which I am taking by the decision in *Khayali v. Hussain Bakhsh* 1886 ILR 8 All. 198. In that case there was a lease for one year, but contained a provision that it shall remain in force so long as the lease or tenant continued to pay the stipulated rent. The suit of the plaintiff for possession and ejectment was dismissed by the trial Court on the ground that the lease was inadmissible in evidence. On appeal the sub-ordinate Judge held that the subsequent words used in the lease were appurtenant to the further consent of the parties and the period of one year having expired, the landlord was entitled to the decree for possession. The High Court affirmed the finding of the sub-ordinate Judge holding that the appellant was only the tenant at will and on expiry of the period of one year the landlord was entitled to eject him.

9. In my view, therefore, true interpretation of Clause 7 read with Clause 2 is that the question of increased rent can only arise in case the lease was extended by mutual consent beyond the period of 11 months. It is nowhere the case of the petitioner plaintiff and Mr. Agarwal has felt unable to point out any pleading to the effect that the period of 11 months was extended by mutual consent at any time. In the circumstances the only conclusion can be that the defendant continued to be in possession by virtue of the provision of the said Act and the agreement regarding enhancement rent never became applicable.

10. Let us consider if the interpretation of the agreement can be different. The only other possible interpretation can be that though the agreement provides that the tenant will vacate at the expiry of period 11 months being the agreed lease period, in fact he was entitled to continue in occupation as a tenant indefinitely and that accordingly at the end of every three years he was to pay the rent enhanced by 20 per cent. This in my view is the only possible other construction. In that case it would be a lease for more than one year and it is required to be in writing and registered as per section 107 of the Transfer of Property Act. In the absence of registered document the lease will be invalid and the tenant will continue only as a monthly tenant on the rent originally filed. The agreement of enhanced rent being based on the term of the lease period being more than one year will not be admissible in evidence as being part of the terms of the alleged lease. The terms which form part of the lease which has to be in writing registered, cannot be made valid and applicable by circumventing the provisions of the Transfer of Property Act and the Registration Act by incorporating them in a separate agreement. In *Rajendra Prasad Gupta Vs. Krishan Murari Lal and Others*, under a written agreement lease was to continue till the tenant continued to pay the stipulated rent. The period of the lease was stated to be one year. While considering this agreement it has been observed :

"A mere reading of the relevant clause of the agreement given above would show that the tenant is given a right to retain the possession of the property as long as

he wishes to keep the same. Neither it is a condition authorising the tenant to enjoy the property for an indefinite period nor it is as remarked in the case of 1886 ILR All. 198 (supra) giving right of possession subject to the future consent of the parties. If it is the latter, the lease would be only for a period of one year and registration will not be necessary but if it is the former, then surely the agreement has compulsorily registerable".

Accordingly in the present case either the lease is for 11 months or for indefinite period. If the former is the case there cannot be any extension without mutual consent but in the latter case the lease would be invalid as being contrary to the provisions of Transfer of Property Act and inadmissible in evidence for want of registration.

11. Even if the agreement or the lease did not require registration and assuming that the agreement recording enhanced rent has come into operation based solely on the fact of the tenant continuing in occupation beyond three years without there being any extension of the period of lease, Mr. Vaishnava's contention is that such charging of enhanced rent will be contrary to the provisions of section 12(2)(a) and (b) and 12(3) of the Hyderabad Rent Act. The said Act was enacted for the purpose of making provisions for the better control of rent of houses and to prevent unreasonable eviction of tenant. It is beyond dispute that the said Act was enacted for protecting the tenants against charging of unduly high rents or charging any money or taking advantage of the tenancy being granted or created and to prevent eviction at the sweet will of the landlords. The Act has to be interpreted in the light of this legislative intention.

12. Section 9 of the Act gives power to the controller to fix a fair rent for a house let to a tenant after holding summary enquiry, on application of the tenant or landlord. Once the fair rent is determined the prohibition u/s 12(1) comes into play, section 12(1)(a) prohibits landlord from claiming, receiving or stipulating or for the payment of any premium or other like sum in addition to such fair rent or save as provided in sections 10 and 11 any rent in excess of such fair rent. Section 12(1)(b) provides for the refund of the premium or other like sum or any rent paid in addition to such fair rent in consideration of the grant, continuance or renewal of the tenancy. Section 12(2) applies when fair rent is not fixed. Section 12(2)(a) prohibits landlord from receiving or stipulating for payment of any premium or other like sum in addition to the agreed rent after the commencement of the Act. Section 12(2)(b) provides that save as provided in Clause (a), any sum paid in excess of the agreed rent under the said Act in consideration of a grant, continuance or renewal of the tenancy shall be refunded by the landlord. Sub-section (3) of section 12 provides that any stipulation in contravention of sub-sections (1) and (2) shall be null and void. The words used are, "any sum paid in excess of the agreed rent under this Act". That must mean the rent originally agreed and the agreed increase in rent as permitted by the Act. This section provides that such an excess sum should have been paid in consideration of grant, continuance or renewal of the tenancy. There is a change

of words in section 12(2)(a) and 12(2)(b). Section 12(2)(a) prohibits receipt or stipulation for payment of "any premium or other like sum". This may not include in agreement to pay increased rent". However, Clause (b) speaks of "any sum paid in excess of the agreed rent." "Any sum paid" is definitely wider than the words "premium or other like sum" and will, therefore, include an increase in rent in consideration of a grant continuance or renewal. In my view what is meant by the agreed rent is the rent first agreed and the agreed increases as permitted by the Act. The words "or other like sum" may have to be read as taming colour from the associated word "premium" and may not include increase in rent and so the Legislature might have thought it necessary to use wider words in section 12(2)(b). One of the provision which contemplate increase in rent by agreement is section 10. Though the marginal note to section 10 speaks of reason for increase in "fair rent", the mains section omits words "fair" and uses only the word "rent". This section, therefore, provinces for increase in any rent, agreed or fair. As against this the marginal note to section 11 speaks of "rent" though the entire section appears to apply only in cases where fair rent has been filed. It is, therefore, clear that marginal note do not correspond to the section and cannot be used to cut down the meaning of word "rent" in section 10. Therefore, the payment of enhanced rent for the reasons mentioned in section 10 can be by any agreement between the landlord and the tenant or in the case of dispute between the two as decided by the controller. In case of the agreement between the tenant and landlord and in absence of any fixation of fair rent by the controller, the increase has not only to be confined within the limit prescribed by the provision, namely, that the increase should not be more than 6 percent of the cost of such improvement or structural alteration but the fair rent along with the increase can not be more than the fair for a similar house in the same locality. Section 12(2)(a) and (b) will include within the meaning of agreed rent the enhancement as per section 10.

13. Thus even looking to the purpose and scheme of that Act any enhancement in the original agreed rent which is in consideration of a grant continuance or renewal of the tenancy will be "sum paid in excess of the agreed rent". The word "agreed rent" in section 12(2)(b) means the agree rent as current and payable when the continuance or renewal taken places or is tot take place. Accordingly if there is an agreement say for a period of one year which provides for rent of Rs. 100/- per month and if the landlord asks a tenant in considerations of continuance or renewal beyond one year to pay Rs. 20/- and tenant agrees, such agreement will be null and void u/s 12(2)(b) read with section 12(3). This being the position the same purpose cannot be allowed to be achieved by providing in the initial agreement for automatically periodical increases in rent.

14. In my view both stand on par and there is no distinction between the two. In one case the landlord increases the rent at the time of continuance or renewal, in the second case the landlord says in advance that if there is continuance or renewal beyond a particular period he will be entitled to recover additional rent.

15. Mr. Agrawal for the petitioner has relied on D.K. Aswathanarayanaiah Vs. Nallapula Sanjeeviah, . There, the Act to be constructed was Madras Building (Lease and Rent Control) Act, (25 of 1949). The text of the Act is not available land was not given in the judgment. In that case there was a rent note under which the rent fixed was Rs. 300/- per year for three years with the further stipulation that in case the plaintiff continued to occupy the house after the lapse of three years he would have to pay the rent at the rate of Rs. 400/- per year. It was contended on behalf of the tenant that such agreement to pay enhanced rent was invalid. Dealing with the said contention, Ekbote, J. (As he then was) observed as follows :

".....In my judgment section 6(2) cannot be made applicable to this case. According to section 6(2) of the Act, where the fair rent of a building has not determined, the landlord has been prohibited from claiming, receiving or stipulating for the payment or any premium or other like sum in addition to the agreed rent after the commencement of the Act.

Sub-section (2) of section 6 clearly applied only to any premium or other like sum and not to the increased in the rent to which section 6(1) is applicable. The words "in addition to the agreed rent" occurring in sub-section (2) of section 6 clearly negatives the contention that provision is applicable to a case where rent has been enhanced. The phrase "agreed rent" used in sub-section (2), therefore, would only mean the rent as agreed to by the parties. It is conceded by Mr. Subrahmanyam that the freedom contract has not been completely taken away by section 6. What section 6 stipulates is that in case a fair rent is fixed, the landlord will not be permitted to charge increase rent except as provided in the Act and in case the landlord enters into an agreement with the tenant to get an increase rent over and above the fixed rent, it follows that such a contract is not enforceable in law. But as long as the fair rent is not fixed, the parties are at liberty to enter into a contract. When it is contended that after the lapse of three years if the parties had entered into a new contract, the increase in rent would not violate in any manner the provisions of section 6, I fail to understand how a different consideration can apply to a case where originally the parties entered into a contract fixing Rs. 300/- as rent per year for the first three years and in case the tenant chose to continue, he would pay at the rate of Rs. 400/- as per year. In either case, it is an agreed rent within the meaning of sub-section (2) of section 6. What is contended by Mr. Subrahmanyam is that the agreed rent is Rs. 300/- and as it is increased after the lapse of three years by Rs. 100/-, it is hit by the provisions of sub-section (2) of section 6. I am unable to agree with this contention. Sub-section (2) is not applicable to a case of increase in rent under an agreement on two grounds. Firstly, the phrase "agreed rent" may mean the rent a fixed by a single indivisible contract covering two different periods or by two independent contract entered into one after the other after the original period of lease was over. Secondly, sub-section (2) relates only to the stipulation of a premium or other like sum and does not concern itself with the payment of an increase agreed rent. It would, therefore, be not correct to apply the

provisions of sub-section (2) to the facts of this case. Sub-section (1) of section 6 is the true provision which is referred. In the view which I have taken, it follows that the Bench decision covers the present case also. The earlier decisions of the Madras High Court, having been distinguished, cannot be said to apply to the facts of the present case."

It has to be noticed that the words in sub-section (2) of section 6 in that case appear to be "premium or other like sum" and not as in the present case the words, "any sum paid in excess of the agreed rent" secondly in that case it was conceded that if there was an agreement to pay a rent at a particular rate for a period of three years and by fresh agreement arrived at, at the end of the said period of new agreement was arrived at for enhancement the second agreement will be a valid agreement. It is obvious that if the second agreement is valid agreement it will be impossible to say that when the original agreement provided for the periodical enhancement if rent, it will be invalid. From this judgment there does not appear that there was any prohibition imposed by the Legislature against charging any sum in addition to the agreed rent as a consideration for continuance or renewal of the lease and if these words existed in the Act, the effect thereof is not considered in the judgment. As I have already pointed out the words "any sum paid in excess of agreed rent in consideration of continuance or renewal of lease" must necessarily mean any amount charged over and above the rent originally agreed as the starting rent, either by way of additional, rent or otherwise, in consideration of continuing or renewal of the lease. Basically together can be no distinction between the continuance or renewal of the lease after the period has expired and provision for continuance or renewal agreed upon at the time of creation of lease. Therefore, any agreement which provides for "enhancement in the rent in consideration of continuance or renewal will be hit by section 12(2)(b) r/w section 12(3). In these circumstances, even if I was against Mr. Vaishnava on the interpretation of the agreement the agreement regarding enhancement will still be void.

16. In the result, the rule is discharged. Looking to the complexity of the matter and uncertainty created by the provisions of the Act, it cannot be said that filing of this revisional application was unjustified. Hence, make no order as to costs of this application.