

(2013) 09 GUJ CK 0017

In the Gujarat High Court

Case No : Civil Revision Application No. 44 of 2005

Swarupram Bhikhaji Raval

APPELLANT

Vs

Anjanaben Maheshbhai Tailor

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2014) 1 GLH 193

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Ajay R. Mehta, for the Appellant; Dakshesh Mehta, for the Respondent

Judgement

N.V. Anjaria, J.—The applicant is the original tenant. He faced the decree of eviction passed by trial Court and confirmed by the lower appellate Court. The eviction was ordered on the grounds u/s 13(1)(k) and u/s 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act" for sake of brevity). Aggrieved applicant has filed the present Civil Revision Application u/s 29(2) of the Rent Act seeking to challenge the judgment and order dated 16th December 2004 of learned Joint District Judge Fourth Fast Track Court, Navsari in Regular Civil Appeal No. 123 of 1997.

2. The profile of relevant facts may be set out. Respondent landlord instituted Regular Civil Suit No. 33 of 1992 for decree of eviction against the applicant-tenant before the Court of learned 3rd Joint Civil Judge (Sr. Dn.) at Navsari. The suit was based on two grounds, firstly that the tenant had acquired suitable alternative accommodation; secondly that the premises was in non-use for continuous period of six months preceding the date of the suit. The rented premises was Municipal House No. 226A, New No. 484, City Survey Tikka No. 31/7 situated in the town of Navsari, which was rented on a monthly rent of Rs. 150/- under Rent Note dated 23rd July 1971. It was the case of the plaintiff that the premises was let out for carrying out hotel business; that the defendant

tenant started business of hotel in name and style of "Himalayan Restaurant", which subsequently was changed to "Abu Restaurant"; thereafter the restaurant was closed by the tenant. It was the case that the suit premises was not being used for the purpose for which it was let for a continuous period of six months immediately preceding the date of the suit. Another ground was that the tenant had acquired a suitable alternative accommodation. It was the further case of the plaintiff that the defendant had started a diamond factory at Parota Bazar in Navsari and was not in need of the suit premises and it used to remain closed. The trial Court framed issues at Exh. 38. Issue No. 2 related to the ground u/s 13(1)(k) which was answered in affirmative by the trial Court. Ultimately, it passed decree for eviction on the said ground.

2.1 Incidentally, it was noticed from the judgment and order of the trial Court that it referred to the ground u/s 13(1)(l) namely that the tenant had acquired suitable alternate accommodation and while passing the decree the said ground was also mentioned. On a closer perusal of the plaint, however, ground of tenant having acquired suitable alternate accommodation was not found to have been even pleaded. The grounds pleaded were of non-user as also the landlord requiring the premises bona fide personal use. The said ground was not believed. It appears that it was by some error that the trial Court must have mentioned the ground u/s 13(1)(l). Be as it may. In any view, undisputedly, the suit premises was let out for the purpose of business. That being so, in view of the decision reported in *Heirs of Badarmal H. Jain and Gautamchand B. Jain Vs. Heirs of Ratanben V. and Sushilaben*, the ground u/s 13(1)(l) would not apply to a premise used for business. Therefore, that aspect would rest there only.

3. Learned Advocate Mr. Siddharth Dave for learned Advocate Mr. Ajay Mehta for the applicants and Mr. Dakshesh Mehta, learned Advocate for the respondent raised their respective contentions with reference to the only surviving ground of non-user of the premises.

3.1 Learned Advocate for the applicant-tenant contented that the ground u/s 13(1)(k) was not properly pleaded as it was not averred that the non-user was without reasonable cause. Then, it was submitted by learned Advocate, that the said ground could not have been raised as it was not mere non-user but non-user without reasonable cause would constitute valid ground. Secondly it was contended that the issue was not framed by the trial Court as to whether there was a nonuser of premises without reasonable cause. This contention was in furtherance of the first one stated above. In the third place, it was submitted that the relevant period of six months was from 10th August 1991 to 10th February 1992, however, the plaintiff failed to show by evidence, it was submitted, that during the said relevant period, the premises was not in use. Fourthly, it was submitted that the burden to prove that the premises was in non-use for the relevant period contemplated u/s 13(1)(k) was on the plaintiff landlord, which was not discharged.

3.2 In support of the above submissions, learned Advocate for the applicant

relied on the decisions in *Shah Ochhavlal Motilal v. Kansara -Dhanlaxmi Becharlal* (1986 GLH 389) and *Hindustan Tea Co. Vs. K. Sashikant Co. and Another*, for the proposition that the plaintiff cannot succeed on the weakness of the defendant and onus to prove non-user was required to be discharged. Another decision relied on was in *Luhar Jagjivanbhai Ramjibhai and Others Vs. Mukundlal Pitambardas Shah*, for the proposition that the landlord has to prove that non-user was without reasonable cause. Yet another decision in *Ashwinbhai C. Sheth Vs. Bank of Baroda*, was relied to emphasise the ingredients necessary to be established u/s 13(1)(k).

3.3 On the other hand, learned. Advocate Mr. Dakshesh Mehta for the respondent submitted that the non-user was held proved by both the Courts below on the basis of proper evidence on record in that regard. He contended that the tenant Swarupram did not enter the box. He relied on evidence of Chhaganbhai Rawal (Exh. 96), the son-in-law of the tenant, to submit that it was clear from his evidence that the premises was not in use for the relevant period. He then submitted that the High Court in exercise of powers u/s 29(2) of the Rent Act may not disturb the concurrent findings arrived at by both the Courts. In that regard, he relied on the decision in *Bhaichand Ratanshi Vs. Laxmishanker Tribhoyan*,

4. This Court considered the facts and the controversy between the parties and the respective contentions canvassed. Non-user of the rented premises by the tenant is one of the grounds provided in Section 13 of the Rent Act whereby the tenant would incur liability to be evicted from the rented premises. Section 13(1) (k) provides that the landlord shall be entitled to recover possession of the premises where the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. Section 13 speaks about the non-user. The non-user of the premises has to satisfy two-fold conditions. Firstly it should be without reasonable cause. Secondly it must have been for a Continuous period of six months immediately preceding the date of institution the suit. The ground for eviction of the tenant provided by the Legislature is of non-user. That the non-user has to be without reasonable cause and that it should be continuous for six months are the requirements or the aspects of the pillar ground of non-user. These are the aspects which must be shown to be present to have a decree for eviction. They are the ingredients to be satisfied with regard to ground of non-user. This Court in *Hemchand v. Kothari U. Motilal* [(1996) 1 GLH 413], inter alia held that once the landlord establishes non-user, the tenant has to show that the non-user was for reasonable cause.

4.1 Dealing with the first submission of the learned Advocate for the applicant that the ground of non-user was not properly pleaded, upon perusal of the plaint, it was seen that the landlord based his case for eviction on the said ground only. The plaintiff landlord averred in clear terms that the premises was rented for hotel business which was changed in its name and style after some time and

later the entire business was closed and the premises was kept in unused condition for more than six months continuously. It was averred that due to the non-use of the premises it was suffering damage. It can hardly be denied that such averments constituted a sufficient pleading for the purpose of raising ground u/s 13(1)(k) of the Rent Act. The ground pleaded was of non-use itself, then the landlord would then be required to establish the ground in terms of the requirements of Section 13(1)(k).

4.2 Law of pleadings does not contain iron-cast rule's though expressive clarity has to be insisted upon. The object of pleadings is to disclose and to be made known the case of the parties. In *Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others*, Supreme Court observed,

The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered.

4.3 It was therefore not necessary that the plaint should contain the pleading in respect of the ground of non-user in exact terms or in the language verbatim employed by the Legislature in Section 13(1)(k). When non-user of premise was pleaded as a ground with the clear averments as noted above, the ground of Section 13(1)(k) under the Rent Act was made out with adequate clarity. It could not have contended validly or legitimately in law that ground of non-user was not properly pleaded. A reasonable latitude in the pleadings not bereft of clarity otherwise is permissible. The submission of learned Advocate for the applicant on this score, therefore, deserves to be rejected.

4.4 The second contention that the issue was not framed expressly by saying that the non-user was without sufficient cause, was a submission closely connected with the first one. As already noted, the crux of the ground u/s 13(1)(k) was non-user of premises by the tenant. When the Section provides that non-user has to be "without reasonable cause" and "for continuous period of six months from the date preceding to the institution of the suit" are the aspects of the ground. They indicate nature of non-user required to be shown to succeed for an eviction decree on that ground. It is true that these aspects or facets are required to be established, but they are not the considerations independent of the main ground or the grounds in themselves. The ground of "non-user" was found to be sufficiently pleaded and the issue of non-user was framed by the trial Court. The plaintiff in his pleadings and in his case and the defendant while raising his defence were ad-idem that they were dealing with which ground u/s 13(1)(k). Thus both the parties raised their respective pleadings with understanding of and in context of ground of Section 13(1)(k) and led evidence accordingly. Whether the non-user was with or without reasonable cause is an

ingredient of Section 13(1)(k), which was to be gathered from the evidence adduced by the parties. It was only pedantic to contend that the issue was not legally framed as it did not contain the phrase "without reasonable cause".

4.5 From Ram Sarup Gupta (supra), the following observations deserve to be noticed:--

Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.

4.6 Similar were the observations of the Supreme Court in Bhagwati Prasad Vs. Shri Chandramaul, on this question,

If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.

5. In view of the above parameters, what is important is to find out that whether on evidence the ground of non-user pleaded by the plaintiff was established in the terms necessary under the Section, namely it was non-user for a continuous period of six months as contemplated and that it was without reasonable cause.

6. Proceeding now to consider the evidence considered by the Courts below whereby the ground of non-user of the premises in question for a continuous period of six months was held established by both the Courts. The landlord deposed at Exh. 46. In her evidence she stated that the premises was not in use. It was supported by panchnama of the Court Commissioner (Exh. 61) the contents of which was noted by the trial Court in paragraph No. 31 of its

judgment. It was revealed from the Court Commissioner's Panchnama (Exh. 61) that the premises remained closed. The utensils and other articles were lying idle with dust accumulated thereon. The Court Commissioner further noted that the tube-lights and fans were not in running condition. Cobwebs were found in the kitchen and the cooking materials had i stains of dust gathered showing thereon the non-use thereof. The Panchnama further recorded that the electricity connection was broken. It could not be gainsaid that the said evidence discharged the primary burden of and for the landlord about non-user. The rest of the burden was the onus got shifted on the tenant.

6.1 The tenant could not show from any evidence that during the relevant period i.e. from 1st August 1991 to 10th February 1992 the premises was not used. While the tenant did not choose to enter the box, his son-in-law, who deposed at Exh. 96 admitted that he had no evidence to show that from 1st August 1992 to 10th February 1992 there was a use of electricity in the premises. Exh. 77 and Exh. 78 showed that the electricity supply in the suit premises was disconnected from 19th April 1990 to 27th November 1991, as also thereafter upto 27th December 1991. There was no evidence to show that thereafter there was electricity consumption in the suit premises. On the contrary the panchnama (Exh. 61) was indicative of closed status of the premises and the activities in the premises-restaurant having remained at a stand still. From the total reading of the evidence, as was rightly appreciated by both the Courts below, there was an inescapable conclusion that the premises was remaining in unused condition during the relevant period and even before.

6.2 The tenant's case that he was sick and was suffering from the ailments under medical treatment due to which he was not in a position to use the premises for some time did not stand in good stead on the evidence on record. The tenant wanted to show by raising such plea that the non-user was not without reasonable cause. That aspect was also examined in detail by the Court below with reference to the evidence on record. It was claimed that he was being treated by the doctors for the ailment of heart, etc. including one by Dr. Dhorajia. The Courts below considered the said aspect with reference to the evidence on record by noting that Dr. Dhorajia, who was examined by defence at Exh. 148 testified that he had examined the defendant on 3rd may 1993 which was much after the relevant period of closure of the premises. The relevant period was from 10th August 1991 for six months extending to the date of the suit.

6.3 The medical papers in the nature of prescription, cardiogram (Exh. 149 to Exh. 154) were all in respect of post-relevant period. It was therefore clear in view of the said evidence before the Court below that the cause of ailment sought to be pleaded by the tenant had no nexus with the non-user of the premises which was required to be considered and decided with reference to the relevant period. The claimed ailment, which, as the evidence showed, was relatable to the year 1993 only, and it could not show that the said was the

cause for non-user of the premises.

6.4 Yet another important aspect coming out from the evidence of Chhaganlal (Exh. 96) and rightly noted by the Courts below was that during the period from 1990 to 1992 the tenant had no licence to run the hotel in the demise premises. If that was the situation, where the licence to run the hotel/restaurant was not there with the tenant, it was not possible to conclude that the premises was being used, more particularly in light of the cogent evidence of its non-user highlighted above. The findings and conclusions arrived at by the trial Court was further considered by the lower appellate Court which also noted that there was no evidence of user of the premises during the relevant period. Neither the electricity bills, nor the sales tax receipts or any other evidence could show that the tenant was in a position to rebut the state of non-user obtaining from other unsurmountable evidence.

7. In the circumstances, the non-user was duly established for the relevant period inviting the ground u/s 3(1)(k) of the Act. For the discussion hereinabove, the findings concurrently arrived at by the Courts below were based on cogent evidence. They are proper and plausible findings based on evidence on record. While taking the above view the Court is remindful of the scope of powers of this Court while exercising jurisdiction u/s 29(2) of the Act, Both the Courts below on appreciation of the evidence held the ground of non-user to have been proved. By its very nature, the ground of non-user is one of facts. Therefore, a finding qua the said ground is necessarily a finding of fact. It is well settled that while exercising the revisional jurisdiction under the Rent Act, the High Court has to confine itself to examine the regularity of the proceedings before the Courts below and the correctness, legality and the propriety of the decisions or orders passed. The revisional powers under the Rent Act cannot be elevated to appellate powers.

7.1 In Tohelram Raval Das Gidwani v. Parshottam Das Chhaganlal Shah [1995 (2) GLH 1019] it was held as under:--

The power of this Court in a revision u/s 29(2) of the Bombay Rent Act is very much limited. The questions of fact cannot be reappraised and re-examined unless there is illegality or miscarriage of justice. Although powers of this Court in a revision u/s 29(2) are little wider than one under the provisions of Section 115 of the Civil Procedure Code, it is narrower than the appellate powers. The revisional powers of the High Court u/s 29(2) is limited in terms of Section itself and is necessarily narrower.

7.2 In Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others, the Apex Court has held that in exercising revisional powers u/s 29(2), the High Court must ensure that the principles of law have been correctly borne in mind by the lower Court, secondly, facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which no reasonable

man could have arrived at. Lastly, such a decision does not lead to miscarriage of justice. But in the guise of revision, substitution of one view where two views are possible and the trial Court has taken a particular view, is not permissible. If a possible view has been taken a particular view, is not permissible. If a possible view has been taken, the High Court would be exceeding its jurisdiction if it substitutes its own view in place of that of the Courts below because it considers it to be a better view. It is also held by the Supreme Court that the fact that the High Court would have taken a different view is wholly irrelevant. The judgments and decrees of Courts below stand the test of scrutiny on above principles on exercise of revisional jurisdiction.

8. For the foregoing reasons and discussion, no interference is called for in the impugned judgment and order dated 16th December 2004 of learned Joint District Judge Fourth Fast Track Court, Navsari, in Regular Civil Appeal No. 123 of 1997. The present Civil Revision Application accordingly stands dismissed. Rule is discharged. The Registry shall send back the record and proceedings to the Court concerned. At this stage, learned Advocate Mr. Siddharth Dave requests that the above order may be stayed in view of the fact that stay was earlier granted. In the facts and circumstances of the case, and in view of what is held hereinabove, the request is not entertained and stands rejected.