

(1989) 02 GUJ CK 0015

In the Gujarat High Court

Case No : Civil Revision Application No. 909 of 1983

Swastik Bearing Co. and Another

APPELLANT

Vs

Dashrathlal Chhotalal Panchal and Another

RESPONDENT

Date of Decision : 01-02-1989

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 41

Citation : AIR 1990 Guj 145 : (1989) 2 GLR 879

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : B.R. Gupta, for the Appellant; J.V. Desai, for the Respondent

Judgement

1. This revision application is against the judgment and order passed by the Small Causes Court at Ahmedabad under S. 41 of the Presidency Small Cause Courts Act, 1882, directing the petitioners to hand over the possession of the premises which consists of industrial shed situated in Tavdipura area of Ahmedabad. There is no dispute with regard to the fact that the petitioners have been inducted in the premises by virtue of agreement Ex. 40 dated June 24, 1971. The petitioners have been called upon to vacate the premises by notice dated August 2, 1977 (Ex. 30). The petitioners did not vacate the premises, but gave reply contesting the claim made by the respondent applicants. Thereafter another notice dated Sept. 28, 1981 (Ex. 43) was served upon the petitioners. This was also replied to by the petitioners tenants wherein various contentions were raised. Ultimately the respondents applicants filed P.S.R.P. application under S. 41 of the Presidency Small Cause Courts Act, 1882 (in short "the Act") praying for vacant possession of the premises. The petitioners appeared in the application and resisted the same on facts as well as on law points.

2. The trial Court on appreciation of evidence came to the conclusion that Ex. 40, the agreement entered into by and between the parties was a document of leave and licence and not a document of lease as contended by the petitioners. On overall appreciation of evidence, the trial Court came to the conclusion that the

licence was revoked and the petitioners had no right to continue in the possession of the premises. Hence the order as stated hereinabove. The petitioners have challenged the legality and validity of the aforesaid order by filing this revision application.

3. The Revision Application is required to be disposed of on the short ground that the Small Causes Court at Ahmedabad had no jurisdiction to entertain and decide the application. S. 41 of the Presidency Small Cause Courts Act, XV of 1882 inter alia provides for recovery of possession of an Immovable property situated within the local limits of Small Causes Courts jurisdiction of which "the annual value at a rack-rent does not exceed two thousand rupees". It is an admitted position that as far as Gujarat is concerned, the words "two thousand rupees" have been substituted by "five thousand rupees". In this case, as per the Agreement Ex. 40 which is the basis of the application for recovery of possession of property in question is concerned, the petitioners are required to pay Rupees 411/- per month as mesne profits or occupation charges or rent, by whatever term the said amount may be labelled. This very agreement also provides that the petitioners were liable to pay property tax and other taxes payable to the Municipal Corporation and to the State Government. The amount of property tax and education cess forms part of the rent. This is so held by this Court in the case of Panchal Mohanlal Ishwardas Vs. Maheshwari Mills Ltd., and in the case of Khemchand Dayalji and Co. Vs. Mohmadbhai Chandbhai, . If this amount of property tax and other taxes is included in the aforesaid amount of Rs.411/- payable every month, the total amount payable by the petitioners to the landlord every year would certainly exceed Rs. 5000 / -. (The amount of net rent payable would be Rs. 411 / - multiplied by 12 i.e. Rs. 4932/ -. Add to this, property tax which, at the current rate, would be 54% of the rateable value). In the instant case the rateable value would be 9/10th of Rs.4932/-. That means, Rs. 4439/- would be the rateable value. Property tax would be as follows:

General tax : 30%

Water tax : 11%

Conservancy tax : 13%

Therefore, the tax payable by the landlord would be Rs. 2397/-. Education cess would be around Rs. 266/-. Thus, the total amount of tax payable would be Rs. 2666/-. It may be noted that in case the amount of tax is payable by the tenant, even the amount of tax is to be included in the annual letting value, and thereafter the amount of tax payable to the Corporation is to be calculated. However, for the purpose of deciding this revision application it is not necessary for us to go into all these details. Taking the amount of tax payable in respect of the premises in question in to consideration, after calculating the same in any manner whatsoever, the total annual letting value would certainly exceed Rupees 5000/-.

4. It is true that the annual letting value or "rack rent" is not defined in the Act.

However, these terms are defined in the Bombay Provincial Municipal Corporation Act, 1949 (BPMC Act, for short) "Annual letting value" is defined in S. 21A of the BPMC Act. As per this definition, broadly it can be said that the annual rent which might reasonably be expected, if let from year to year, would be the annual letting value, while the term "rack rent" defined in S. 2(53) means the amount of the annual rent for which the premises with reference to which the term is used might reasonably be expected to let from year to year ascertained for the purpose of fixing the rateable value of the premises. It may be argued that the aforesaid definition given in the BPMC Act cannot be taken into consideration while deciding a case under the Small Causes Courts Act. Even so, if one goes by the dictionary meaning of the word "rack rent" it would mean "a rent of the full value of the property, or near it" (See Stroud's Judicial Dictionary). The question came up for consideration before the Bombay High Court in the case of *Lakhamshi Hiralal and Co. Vs. Damji Khimji and Co.*, . After referring to the dictionary meaning of the term "rack rent" and certain English decisions on the point, it is held that "the annual value at rack rent is to be based on "rent" even if the rent is controlled by Legislature and not on licence fees. The rack rent has to be "rent" first before it becomes rack rent. It can only mean gross rent and not net rent." Similar view is taken by the Madras High Court in the case of *K. Ramanujam Chettiar v. Arunachaleswarar Devasthanam*, reported in AIR 1978 Mad 395. In that case the question arose as to which rent should be taken into consideration - actual rent or the rent prevailing in the locality. In that connection the Court referred to the decision of the Bombay High Court in the case of *Lakhamshi Hiralal and Co.* (supra) and thereafter while considering the meaning of "rack rent" held that it could only mean "gross rent" and not "net rent".

5. In above view of the matter in the instant case as per the agreement Ex. 40 the petitioner tenant is required to pay Rs. 411/- per month i.e. Rs. 4932/- per year. The agreement also specified that the tenant is liable to pay property tax and other taxes. By any standard the property tax payable in the year 1971 would be more than Rs. 68/-. On this point there is no dispute. At any rate when the application was filed in the Small Causes Court on April 2, 1982 the amount of property tax and education cess was almost the same as it is being levied today. This factual position is also not disputed. In this view of the matter the Small Causes Court had no jurisdiction to entertain and decide the application, since the immovable property in question was such that its annual value at a rack-rent exceeded Rs.5,000/-. For recovery of such property the application u/s 41 of the Act cannot be entertained by the Small Causes Court. On this short ground the, revision application is required to be allowed.

6. In the facts of the case, it would not be proper to deal with other points as regards the nature of Exh. 40, agreement, by which the petitioners have been inducted into possession. The trial Court has held that it is a document of leave and licence. The petitioners contend that it cannot be said to be a document of leave and licence. It is submitted that the petitioner had interest in the property

and therefore the relations between the parties were that of lessor and lessee and not that of licensor and licensee. However, in view of the fact that revision application is being allowed on the aforesaid short ground only, I do not think it proper to consider this issue as it may adversely affect either of the parties in future litigation, which may be resorted to by either side.

7. At this stage the learned Counsel for the respondents requests that the respondents-original applicants should be permitted to withdraw the amount deposited by the petitioners in the trial Court. Learned Counsel for the petitioners has no objection if the amount is permitted to be withdrawn by the respondents.

8. In the result the revision application is allowed. The judgment and order passed by the Small Causes Court at Ahmedabad in P.S.R.P. Application No. 14 of 1982 is quashed and set aside. However, respondentoriginal applicants will be at liberty to withdraw the amount deposited by the petitioners in the trial Court. Rule made absolute accordingly.

9. Application allowed.