
(1979) 11 BOM CK 0009

In the Bombay High Court

Case No : In Spl. C.A. No. 577, 578 and 579 of 1972

Vithaldas and others

APPELLANT

Vs

Mansukhlal

RESPONDENT

Date of Decision : 14-11-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 227

Citation : (1980) MhLj 612

Hon'ble Judges : M.R. Waikar, J; B.C. Gadgil, J

Bench : Division Bench

Advocate : P.N. Deopujari, for the Appellant; A. Shelat, for the Respondent

Judgement

M.R. Waikar, J.—The learned Single Judge (Padhye J.), who heard these Special Civil Applications No. 577, 578 and 579 all of 1972, referred two questions to the larger Bench which arose for his consideration under the following circumstances :

2. The dispute related to two godowns and one shop which were in occupation of tenant Vithaldas,--petitioner No. 1. One godown belonged to Mansukhlal, the other godown belonged to Ramniklal and the shop belonged to Ratilal who were all real brothers. These three brothers initiated three separate rent control proceedings against tenant Vithaldas for eviction on several grounds under clause 13 (3) of the C. P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter called the Rent Control Order). These three Rent Control proceedings were clubbed together by the Rent Controller as they were directed against a common tenant by the 3 landlords, who were brothers.

3. The Rent Controller granted permission on all the counts on which permission was sought against Vithaldas, but dismissed the applications holding that the tenancy itself was void.

4. Both the parties in all the three Rent Control proceedings, therefore, preferred

separate appeals challenging the orders that were adverse to them. A set of these appeals so preferred was dealt with by the Resident Deputy Collector in two groups. He disposed of a group of four appeals (that is, two preferred by the landlords and two by the tenant) relating to two godowns by one common judgment and a group of two appeals, (one by the landlords and the other by the tenant) relating to the shop by another common judgment.

5. The Resident Deputy Collector granted permission to the landlords in respect of one godown and the shop on the ground of sub-letting, a ground contemplated under clause 13 (3) (iii) of the Rent Control Order. In respect of both the godowns permission was also granted by him on the ground that the tenant had secured an alternative accommodation, a ground contemplated by clause 13 (3) (v) of the Rent Control Order.

6. Feeling aggrieved by this order, the tenant Vithaldas preferred three separated Special Civil Applications under Article 227 of the Constitution of India, which came to be heard by the learned Single Judge.

7. The learned Single Judge set aside the finding of the Resident Deputy Collector that the premises were sub-let, as alleged. The learned counsel for the respondents (landlords) in She 3 petitions wanted to support the ultimate permission that had been granted by the Rent Control authorities even on the grounds which were held against them, even though they did not challenge the rejection of their application with respect to those grounds, either in appeal or by way of a writ petition. This, according to the learned Single Judge, is not permissible. In his opinion each ground was based on different set of facts and each had a different cause of action independent of the other. He observed that a landlord can combine all such claims in one application before the Rent Controller, or they could have been made subject matter of different applications as well. It was further observed that the consequences of different grounds are also different and rights either of a landlord or of a tenant under different grounds are also different. The learned Single Judge found that he was unable to agree with the observations made by a Division Bench decision of this Court in--Fakruddin v. M/s. Hindusthan Stores Ltd., Akola Special Civil Application No. 388 of 1960. decided on 1st September 1961 by Kotval and Shikhare JJ. upon which reliance was placed by the learned counsel for the respondents. The said decision in the opinion of the learned Single Judge requires reconsideration by a larger Bench. This is the first point on which reference had been made.

8. The second point of reference is in relation to clause 13 (3) (v) with Explanation appended thereto of the Rent Control Order. The decision of the Single Judge of this Court in Radhabai v. Resident Deputy Collector Special Civil Application No. 791 of 1964 decided on 7th February 1966 on which reliance was again placed by the learned counsel for the respondents in the opinion of the learned Single Judge, lays down a wide proposition which again needed reconsideration by a larger Bench.

9. We would take up the second point first for our consideration. The relevant part of clause 13 (3) (x) of the Rent Control Order, with which we are concerned here, is in these terms:

13(1) No landlord shall, except with the previous written permission of the controller:

.....

(3) If after hearing the parties the Controller is satisfied :

(i) to (iv)

(v) that the tenant had secured alternative accommodation, or has left the area for a continuous period of four months and does not reasonably need the house;

Explanation--For the purpose of this item the tenant shall be deemed to have secured an alternative accommodation if he owns a residential house in the city or town concerned and if such house is constructed on a site lying vacant on 1st January 1951 or on an site made vacant on or after that date by demolition of any structure standing on such site; or..."

10. In the instant case petitioner No. 1 had purchased a house in the town in or about the year 1962, a part of which was being used by him for his residential purpose and a part as a godown for storing gunny bags in which he deals. The contention of the tenant was that he had an expanding business for which he was required to hire an additional godown in addition to the two godowns in question. The premises in question were used for non-residential purposes and hence the Explanation to clause 13 (3) (v) of the Rent Control Order, as the learned Judge rightly observed, had no application, which relates only to a residential house. The observations of the learned Single Judge in Radhabai's case (cit. supra) that since the house has been acquired by the tenant it must be taken that he had taken an alternative accommodation within the meaning of clause 13 (3) (v) of the Rent Control Order, in the opinion of the learned referring Judge, is too wide a proposition and needs reconsideration. In his opinion the alternative accommodation contemplated by clause 13 (3) (v) would be an accommodation which a tenant had acquired in place of one which he was already having. He further observed that if the tenant needs the present accommodation in question and also needs the additional accommodation available to him and both are meant for being utilised, then it cannot be said that he has secured alternative accommodation. We do feel that the observations made by the learned Single Judge in Radhabai's case are too widely made.

11. The word "alternative" means offering a choice of two or more things and if one is chosen the other is rejected. The word connotes a necessity for deciding between two courses or propositions either of which may be chosen, but not both. The two contrasted or paired courses or things may or may not be identical, or exactly similar, or as convenient as the other. The accommodation that is pointed out as a substitute or as an alternative accommodation may have

some plus or minus points, some merits or demerits as compared to the one in question in the occupation of the tenant and even so it could be termed as an alternative accommodation as the word "alternative" does not connote two exactly identical things, situations or courses.

12. An analogous ground for eviction under the Bombay Rent Act is to be found u/s 13 (1) and the word used there is "suitable" and not the expression "alternative" Section 13 (1) of that Act is in these terms:

13(1) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence".

Thus under the Bombay Rent Act the emphasis is on the word "suitable" with reference, of course, to the alternative accommodation in question. In the Rent Control Order "alternative" is the only word used in clause 13(3)(v), but to say that the tenant would not be entitled to contend anything as to the suitability or otherwise of the alleged alternative accommodation would be to defeat the very purpose of this clause and the intent on of the Legislature. If the tenant after expansion of the size of his family acquires some additional accommodation for his married sons or school going children of his family, tenant would not be precluded from pointing out that the additional accommodation though secured by him cannot truly be considered as a substitute for the one in question or as an alternative accommodation. In order, therefore, to decide whether new or additional accommodation secured by the tenant can be looked upon as an alternative accommodation, the Court ought to decide the needs and difficulties of the tenant with reference to the other accommodation that is acquired by him. He can also consider whether grounds put forth by the tenant are reasonable, real and bona fide. The observations to be found in Radhabai's case to the effect that as soon as the landlord establishes that the tenant has secured an alternative accommodation he is entitled to terminate the tenancy is too wide and broad a proposition. A tenant would not be precluded from pointing out whether such an accommodation can really be termed as an "alternative" accommodation where he should be obliged to shift in substitution of the tenanted premises. An improper or unsuitable accommodation certainly cannot be called an alternative accommodation and in this view of the matter the element of suitability, convenience or otherwise is ingrained in the term "alternative". Therefore, whether an accommodation is really an alternative accommodation or not would always depend upon the facts and circumstances of a case.

13. So far as the first point is concerned, Order 41, rule 22 of the CPC confers two distinct rights on the respondent in an appeal. The first is the right of upholding the decree of the Court of the first instance on any grounds, including the grounds on which the Court held against him, without filing any cross-objection. This right, of course, does not confer on him a right higher than that he would have had if he had preferred an appeal against the ground decided against him. See *The Management of Itakhoolie Tea Estate Vs. Its Workmen*, .

14. The second right is that of taking cross-objection to the decree which he would have taken by way of an appeal. In this first case he supports the decree while in the other case he attacks the decree. In other words, he attacks the decree in respect of reliefs not granted to him by the Courts below. The driving wedge between the two rights in our opinion, is the extent or totality of the reliefs that are claimed by him and what was ultimately granted to him and not whether the cause of action is independent of the same. If a decree is partly in favour and partly against the respondent and if he does not prefer either an independent appeal or a cross-objection so far as that part of the decree which is against him is concerned, then certainly he cannot challenge that part, obviously because he would not merely be supporting the decree which is in his favour but would be attacking that part by which he is aggrieved and thus widen the area of the relief that was finally granted by the Court of first instance. The illustration given by the learned referring Judge in his referring order precisely relates to such a case, namely, where a suit is filed on four independent pronotes and claim under two is decreed and under two dismissed, then the plaintiff as a respondent in the appeal filed by the defendant cannot say that the decree on the basis of the other two pronotes also should have been decreed, without filing any cross-objection simply under the guise of supporting the decree inasmuch as he is not merely supporting that part of the decree that he has already secured, but he is attacking the decree that is against him.

15. Thus in upholding or supporting the decree the respondent only endeavours to reinforce the relief that is already granted on whatever grounds possible, including those grounds on which the Court has held against him. His right is limited only for canvassing the correctness of the findings against him in order to support the ultimate judgment that has been passed against the appellant. The right as observed above does not confer any higher right, that is, he certainly cannot seek any enlargement of the relief that is granted to him. In other words, he cannot be Permitted to fight out a battle that he has lost or reopen the chapter that is closed without having filed an independent appeal or a cross-objection which he could do. Therefore when a landlord seeks permission, as in the instant case, for determination of the lease on more grounds than one and if permission is granted to him on one ground, negating, however the other grounds, the order is wholly in favour of the landlord so far as the ultimate relief which he prayed for is concerned and he could not have appealed against the adverse findings simply by way of criticism of the judgment.

16. A similar or rather the very same point under this very enactment, that is, the Rent Control Order, had come up for consideration in *Seetaram and Others Vs. Smt. Ramabai and Another*, . The landlord had sought permission to serve notice determining the lease on three grounds. The Rent Controller did not accept the two grounds, but granted permission on the third ground. The tenant appealed in which the landlord as the respondent sought permission to urge that the order was justified on the two other grounds on which permission had been refused to him. The learned Additional Deputy Commissioner in appeal held that

the landlord could not urge those grounds as he did not prefer any appeal. The finding on the third ground which was in favour of the landlord was set aside in appeal. In the Writ Petition that was filed by the landlord, the Division Bench of the Madhya Pradesh held that the landlord could not prefer any appeal against an order of the Rent Controller, as Clause 21 of the Rent Control Order enabled only a person aggrieved by the order of the Rent Controller to prefer an appeal. This is what was observed :

But the clause (clause 21) to which we have referred does not say that any person aggrieved may appeal to the Deputy Commissioner. It says that any person aggrieved by an order of the Controller may prefer an appeal. When the order was in favour of the landlords they were not aggrieved by the order. To borrow the language of their Lordships of the Privy Council in (1931) LXI MLJ 367 (Privy Council) , there was no reason why the landlords should appeal from the order which the Rent Controller had made; there was every reason why they should be satisfied therewith.

A right of appeal is conferred to get an order set aside or out of the way. Even if a person has a grievance against a finding he cannot come by way of appeal unless he challenges the order itself and wants to get it interfered with. Unless we hold this way, even if the order is entirely in favour of a party he would be required to file an appeal against a finding if the other side were to appeal against the order as it is. In our opinion, the landlords here had every reason to be satisfied with the order, and they need not have appealed.

The question is whether they were entitled to set up an argument before the Additional Deputy Commissioner that the order passed by the Rent Controller was erroneous on the first two grounds which they had urged before him. In our opinion, they were. The learned counsel for the petitioners sought the analogy of Order 41, Rule 22 of the CPC and wanted to apply it on the strength of section 141 of the Code. In our opinion, without having to decide whether Order 41, Rule 22 of the CPC applies or not to rent control proceedings and appeals arising therefrom, we are quite satisfied that on general principles a party who has an order in its favour is entitled to show that the order is justified on some ground which was decided against it in the Court below.

Thus this decision, in our opinion, is on all fours so far as the point in reference is concerned.

17. This decision of the Madhya Pradesh High Court has also been relied upon by the High Court of Andhra Pradesh in *Bhagavatula v. M. Ananclam Chatti* A I R 1972 A P 66.

18. In fact the Supreme Court in the following cases reiterated the proposition that the respondent in appeal can support the judgment in his favour even on grounds which were negatived in the judgment. *Bansilal Kohistani Vs. Rishi Kumar Kaushal*, , *Sri Chandra Prabhuji Jain Temple v. Harikrishna* A I R 1973 S C 2563 and *The State of U.P. and Another Vs. Shri Anand Swarup*, . In the

decision reported in *Sri Chandra Prabhuji Jain Temple v. Harikrishna* a suit was filed to recover money due under two mortgages. The challenge was that the sanction required for executing these mortgages was not proper. The trial Court found that the mortgages were valid and the claim was decreed with charge against only one of the properties. The original plaintiff preferred an appeal saying that the charge should have been on all the properties concerned and not only on the two properties. The defendant (as respondent) did not file any appeal or cross-objection and challenged that sanction for the mortgage was invalid. The argument advanced was that the respondent (defendant) could not raise this objection in appeal that the orders of sanction were invalid as he did not appeal from the decree to recover the mortgage money from one-half share in the properties. This argument was repelled by the Supreme Court with the following observations :

19-A. It is no doubt true that the respondents cannot be allowed to impugn the decree passed by the High Court in favour of the appellants as they did not file any appeal from that decree. But we think that there is no reason why they should not be allowed to urge the plea that the orders of sanction were invalid when the appellants want not only to maintain the decree passed by the High Court but also to get a decree charging the entire properties. In other words, the bar against urging the plea of the invalidity of the orders of sanction would apply only if the respondents seek to impugn the decree already obtained by the appellants but not when the appellants seek to obtain further reliefs in the appeal on the basis of the orders. In such a case we are not aware of any rule of law which would preclude the respondents from urging the plea.

Thus though the respondents were not permitted to impugn or mutilate the decree that was passed against them, they were permitted to contend that the decree as passed was proper and it did not call for any enlargement of the reliefs as claimed by the plaintiff.

19. Shri Deopujari, the learned counsel for the petitioner, submitted that the respondent in a writ petition would not be permitted to invoke the provisions of Order 41, rule 22 of the Code of Civil Procedure.

20. We see no force in this submission of Shri Deopujari inasmuch as there are no rules which prohibit the respondent in a writ jurisdiction to exercise powers analogous to those conferred by Order 41, Rule 22 of the Code of Civil Procedure. In *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another*, the respondents were entitled to support the decision of the Tribunal even on the grounds which were not accepted by the Tribunal or any other grounds which may not have been taken notice of by the Tribunal while they were patent on the face of the record.

21. With reference to the first point, therefore, we observe that the respondent in a writ petition would be entitled to support the order passed by the Rent Controller even on findings which are pronounced against him. The matter be

now placed before the learned Single Judge. Costs of the reference will be costs in the cause.