(1972) 06 BOM CK 0009

In the Bombay High Court

Case No : Spl. C.A. No. 155 of 1968

West End Hotel Pvt. Ltd. APPELLANT

Vs

Manu Subedar RESPONDENT

Date of Decision : 28-06-1972

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1), 18, 18(1)
Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 114A

Citation : (1973) MhLj 599

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : R.B. Andhyarujina and Vilas V. Kamat, for the Appellant; M.V. Paranjape and A.G. Parikh for Opponents Nos. 1, 3 and 4, for the Respondent

Judgement

G.N. Vaidya, J.—The petitioner is a Company by name West End Hotel Private Ltd., running a hotel known as West End Hotel in the premises belonging to a Public Charitable Trust known as ''Lotus Trust.'' Respondents Nos. 1 to 5-the plaintiffs, are the Trustees of the said Public Trust. The premises consist of a building situated on Plot No. 45, Queen''s Road Estate, Marin Lines, Bombay. The building consists of a ground and five upper storey''s, There is a compound round the building. That compound includes two garages. The petitioners became the tenants of the said building under an indenture of lease dated May 19, 1948 made between Jupiter Cinema & Hotel Co. Ltd. and the petitioners. Under the said lease the petitioners became the tenants of the building for a period of 20 years beginning from June 1, 1948. The rent which the petitioners had to pay was Rs. 6,500 per month for the building together with the garages. The Jupiter Cinema and Hotel Co., Ltd., executed an indenture of transfer dated April 24, 1954, by which their rights and liabilities under the .ease were assigned to the respondents-Trustees on behalf of the Lotus Trust. The tease granted to the petitioners was also subject to the terms and conditions of a head (sic) in respect of the said property dated July 26, 1943 executed by the Governor General of India in favour of the first plaintiff-respondent No. 1. One of the terms of the said lease dated May 19, 1948 was contained in clause 3 (m) which runs as follows :

3 (m) ''''To effect and maintain at their cost an insurance in the joint names of the Lessors and Lessees on all equipments and the articles provided by the Lessees in the sum of rupees four Lakhs. Sucre insurance to be effected in the same Company in which the Lessors have insured the demised premises. The Lessees to pay the premium in that behalf and to produce premium receipts for the inspection of the Lessors from time to time.

Clause 10 of the said lease-deed provided that if there was any breach of the terms of the tenancy

and such breach is not remedied within 15 days after the intimation in that behalf, the lessors shall be at liberty to forfeit the said deposit made by the lessees and also to re-enter after 48 hours'' notice to the lessees upon the said demised premises or upon any part thereof in the name of the whole and the tenancy shall thereupon determine but without prejudice to any claim which the lessors may have against the lessees in respect of any breach of the ''ease'' covenants herein contained.

2. Relying on the breaches of the said lease deed, respondent Nos. 1 to 5 terminated the tenancy of the petitioners and filed on September 19, 1957 a suit for evicting the petitioners and for recovery of arrears of rent an! municipal taxes, in the Court of Snail Causes at Bombay under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Eviction was sought on two grounds, viz (I) that the petitioners committed breaches of the terms of tenancy and (2) that respondents Nos. 1 to 5 reasonably and bona fide required the premises for occupation for the purposes of the Lotus Trust. The breaches alleged in the plaint were (a) non-payment of rent (b) non-payment of municipal taxes (r) nonpayment of insurance premium and (d) user of the garages as office and laundry. Respondents Nos. 1 to 5 claimed that the tenancy was forfeited by the notice dated May 14, 1957 in accordance with the terms of the lease.

3. The suit was resisted by the petitioners. They contended that the rent charged by the plaintiffs under the lease was in excess of the standard rent and hence the petitioners had filed an application for fixation of standard rent, viz. R. A. N. No. 1240 of 1957, from which the respondents have filed Special Civil Application No. 1207 of 1968 in this Court. The petitioners denied being irregular in payment of rent and submitted that the plaintiffs had accepted the rent as and when tendered and all the irregularities, if any, were waived by them. They also denied having committed breaches of any terms of the lease or the head-lease and submitted that the plaintiffs did not reasonably and bona fide require the premises for the use and occupation of the Trust, and greater hardship would be caused to the petitioners than to the respondents.

4. The learned trial Judge framed as many as 25 issues in view of the pleadings

of the parties. He found against the plaintiffs on the material issues by holding that the petitioners had not committed breach of any of terms of the tenancy. He also held, so far as non-payment of insurance premium was concerned, as follows;

On issue No. 18, namely, whether the defendants have committed breach of the terms of the tenancy in the matter of payment of insurance premium; if so. what is the consequence of the said breaches, if any?

Clause 3 (m), Ex. C regarding the insurance reads as follows:

3-M : To effect and maintain at their cost an Insurance and the lessees to pay the premium and to produce receipts.

By their letter dated 10th May 1957 the plaintiffs called upon the defendants to pay to them in order to enable them to renew the policy. Now under the said clause the defendants had to insure the property and not to make the payment of premium to the plaintiffs and that clause does not provide for payment to the plaintiffs. The lessor would be entitled to forfeit the lease if they had called for the receipts of the insurance premium and they were not produced for 15 days. It is not alleged as one of the grounds of forfeiture in the letter dated 14th May, 1957. My answer to issue No. 18 is, therefore, in the negative.

The learned Judge further head that respondents Nos. 1 to 5 did not require the premises reasonably and bona fide for their use and occupation. Having regard to the facts of the case and the circumstances under which the defendants were conducing the (sic) in which the I invested large amount of monies, he further found tha: greater hardship would be caused to the defendants by passing an order in ejectment than by refusing to pass the same in favour of the plaintiffs. The learned Judge further held that in the absence of a notice u/s 114-A of the Transfer of Property Act, the plaintiffs suit for eviction was not at all maintainable. The learned Judge, therefore, dismissed the suit with costs on January 23, 1962.

5. The respondents-plaintiffs carried an appeal against the said decision before the Appellate Bench of the Court of Small Causes at Bombay. The Appellate Bench by its decision dated November 28, 1967 reversed the decree only on the ground of non-payment of insurance premium as required by clause 3 (m) of the lease deed dated May 19, 1948. Although the Appellate Bench came to the conclusion that the plaintiffs required the premises reasonably and bona fide for the purpose of the Lotus Trust, they agreed with the trial Court in holding that greater hardship would be caused to the petitioners if a decree for eviction was passed in plaintiffs'' favour, than the hardship caused to the plaintiffs if a decree for eviction was refused. The Appellate Bench, while setting aside the decree of the trial Judge and decreeing the plaintiffs'' suit, directed that the petitioners should vacate the premises by December 15, 1967, pay Court-fees and costs of the plaintiffs and if the petitioners paid Rs. 7,470, including Rs. 6,500 as standard rent for the building plus Rs, 970 for the air conditioning and cold-

storage equipment as current compensation before 10th of every month commencing from December 10, 1967, the execution of the decree was to be stayed till May 31, 1968.

6. The decree passed by the appellate Bench is challenged in the above petition. Mr. Andhyarujina, the learned counsel for the petitioners, submitted that the plaintiffs were not entitled to recover possession of the premises even assuming that there was a breach of the covenant as to payment of insurance premium contained in clause 3 (m) as the term contained in the said clause was unenforceable inasmuch as it was inconsistent with the provisions of section 18 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Secondly, Mr. Andhyarujina submitted that the decree directing the respondents to pay Rs. 970 as hire for the equipment consisting of the air-conditioning and the cold-storage system, was manifestly, illegal as it was contrary to the agreement dated May 19, 1948, under clause (b) of which the hire payable ceased after July 1, 1967.

7. Both these contentions are well-founded and must be upheld. The premium, which was demanded by the plaintiffs from the petitioners, was clearly a consideration within the meaning of section 18, in addition to the standard rent. Mr. Paranjape, the learned counsel for the Trustees, submitted that as the premium was to be paid to the Insurance Company, it could not be said that it was a payment made to the landlord himself or through any person acting or purporting to act on his behalf within the meaning of section 18 (1),

8. The contention of the petitioners in the trial Court with regard to the payment of premium was that in practice the payment of the premium was always made by the plaintiffs who insured the building with the equipment and furniture and were recovering the portion of the premium relating to furniture and equipment belonging to the petitioners from the petitioners from year to year. As stated already, the trial Judge gave no importance to the alleged breach by non-payment of insurance premium because the plaintiffs had not forfeited the tenancy of the petitioners on the ground of non-production of premium receipts and they were not entitled to forfeit the tenancy on the ground of non-payment of the insurance premium. He had also held that as clause 3 did not require the petitioners to pay the premium to the plaintiffs, the plaintiffs had no right to demand the premium from the petitioners. Whatever it is, having regard to the contents of the clause and the conduct of the plaintiffs, it is clear that the plaintiffs were demanding insurance premium from the petitioners in addition to the standard rent which they were entitled to recover from the petitioners. The breach, which the plaintiffs complained of, was. for not complying with their demand. It is true that the Appellate Bench has taken it for granted that as no premium was paid by the petitioners except by sending a cheque, which was offered conditionally as the petitioners were insisting that the tenancy and the terms of the tenancy continued, there was no legal tender of the premium and hence there was a breach. In whatever way the matter is looked at, there could

be no doubt that the plaintiffs were demanding from the petitioners an amount which would be a consideration within the meaning of section 18 (1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 in addition to the standard rent. The fact that the amount was to be paid to an insurance company makes no difference, because the amount was to be paid not only to the insurance company but also on behalf of the petitioners and the plaintiffs. To that extent the plaintiffs would be receiving consideration which is prohibited by section 18.

9. For breach of such a term which is inconsistent with the provisions of section 18 the plaintiffs could not seek a decree for eviction in view of the provisions contained in section 12 (1) of the Bombay Rent Act which runs as follows:

12. (I) "A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

10. Moreover, I am inclined to hold that when the section says ''conditions of the tenancy in so far as they are consistent with the provisions of the Act'', it is not open to the Court to read the word "consistent'''' as including any condition which is ''not inconsistent'' with the provisions of the Rent Act. It may be that one of the meanings of the word "consistent" is in certain circumstances "not inconsistent". But in the context of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which was enacted to give protection to tenant against the arbitrary, oppressive, unusual or strange conditions and terms of tenancy being imposed by the landlords in areas where there was scarcity of accommodation, it must be held that the words "consistent" in section 12 (1) means nothing more or less than being consistent.

11. Unless there is a provision in the Bombay Rent Act, which is consistent with the disputed condition imposed under the terms and conditions of the tenancy, the tenant is not bound by that condition. Thus, in the instant case, the tenant was not bound to pay insurance premium, because there is no provision in the Bombay Rent Act which required a tenant to pay insurance premium in addition to standard rent and permitted increases in respect of the furniture kept in the demised premises. The tenant is bound to conform only to such terms and conditions which are consistent with the provisions of the Act. If there is no provision in the Act which is consistent with a term of the tenancy, the breach of that term would not disentitle the tenant from claiming protection u/s 12 (1) of the Act.

12. Mr. Paranjape, the learned counsel for the Trustees, however, submitted that the view that 1 am taking is contrary to the dictionary meanings ordinarily to be found in dictionaries, like Aiyar''s Law Lexicon. He also submitted that even in English Law the word ''consistent'' is explained as meaning ''not inconsistent''

and he referred to Megarry''s Rent Act, 10th edn. pp. 202 and 203. He also submitted that in an unreported judgment of the Supreme Court in Haji Suleman Haji Ayub Bitiwandiwala v. Narayan Sadashiv Ogale (1967) Civil Appeals Nos. 880 to 887 of 1964, decided on May 3, 1967 (S C). (Unrep.) and the decision of the former Saurashtra High Court in Kantilal v. Dharamshi A I R 1951 Sau. 34 the Courts had taken the view that "consistent" means "not inconsistent". All these contentions must be rejected. The dictionary meanings give other meanings as well. The words in he statute must be interpreted having due regard to the nature and object of the Act and not merely with reference to dictionaries however venerable and weighty they may be. The dictionaries cannot be taken as authoritative exponents of the meaning of words used by the Legislature although we are often sent for instruction to these dictionaries to know the meanings of words,

13. So far as the statement of law in Megarry''s book is concerned, at page 202 there is a reference to Tideway Investment and property Holdings Ltd. v. Wellwood (1952) Ch. 791, which is based on the words used in the English statute. Lord Justice Evershed M. R. observed in that case as follows with reference to a similar argument of the counsel in that case (p. 820.):

...Mr. Campbell referred to a phrase used by Scrutton L. J. in Remon v. City of London Real Property Co. (1921) 1 K B 49 in which he described as the persons entitled to the benefit of the Act, persons ''who were willing to carry out the terms of their old tenancy''. But, that phrase was, of course, only a general and compendious way of indicating the general policy of the Act; it was not in the lest directed to any point such as has been here debated...I have been unable to find any language in the Acts which would give any basis or warrant for the suggestion which Mr. Campbell has put forward.

14. Lord Justice Jenkins L. J observed as follows (p. 825.) :

As to Mr. Campbell''s argument to the effect that in the circumstances of this case the tenants had succeeded in putting themselves outside the protection of the Rent Acts by (if I may so describe it) their contumacious attitude with regard to their obligations under their respective tenancies, I can only say that, having given the matter the best attention I can, I can find nothing in the Acts, or in any of the decisions under the Acts to which we have been referred, to justify the conclusion to which he invites us to come.

15. With great respect, I would adopt the very words of Lord Jenkins L J. and reject the argument made by Mr. Paranjape as I find in none of the cases referred to by him the Courts dealing with conditions or terms of tenancy which had no corresponding consistent provisions in the Act.

16. It must, therefore, be held that the Appellate Bench erred in law in holding that a decree for eviction could be passed against the petitioners on the ground of the alleged breach of clause 3 (m) of the terms and conditions of the lease-deed dated May 19, 1948.

17. Mr. Paranjape for the plaintiffs-respondents submitted that the decree for eviction could be justified because the Appellate Bench and the trial Court were in error in holding that greater hardship would be caused to the petitioners, particularly when the Appellate Bench had come to the conclusion that the plaintiffs reasonably and bona fide required the premises for their personal use and occupation. The finding recorded by the two Courts are findings of fact based on appreciation of evidence. I find no error of law in the findings which would justify interference by this Court with the said findings under Article 227 of the Constitution of India.

18. Mr. Paranjape''s argument that even though the tenancy of the petitioners was terminated by the landlords for non-payment of rent, on several other grounds it was still open to the landlords to contend that the tenants were not entitled to protection u/s 12 (1) as they committed breaches of the terms of tenancy, will not survive as I have come to the conclusion that the material term of tenancy in the present case was actually Inconsistent with the provisions contained in section 18 of the Act, and in the absence of any provision in the Act consistent with the said term, the tenant was not obliged to follow such term. It is, therefore, unnecessary to consider the other authorities cited by Mr. Paranjape in this connection, viz., Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, and Balmukund & Co. v. Matigaldas AIR 1953 Bom. 200 = (1952; 55 Bom. L R 50) in support of his argument that even if the tenancy was forfeited, the tenants were bound to perform contractual terms and conditions of the tenancy. It is also not necessary to deal with the points of waiver by acceptance of rent and regarding construction of clause 4 (1) as these questions would arise only if there was a valid forfeiture of tenancy. It is also unnecessary to go into the contention with regard to the validity of notice dated May 14, 1957.

19. However, the petitioners must also succeed in their contention with regard to the direction to pay Rs. 970 even for a period subsequent to July 1, 1967 as the said direction is manifestly inconsistent with what the parties themselves hid agreed under the agreement of July 1, 1948. The argument of Mr. Paranjape that that agreement was subsequently varied by the parties under the consent decree in a suit filed on the Original Side of this Court, must be rejected, because, there is nothing in the said consent decree which puts an end to the agreement dated July 1, 1948. The consent decree only provided for rent during the pendency of the standard rent application which is the subject-matter of Special Civil Application No. 1307 of 1968 pending in this Court. The agreement dated July 1, 1948 in unequivocal terms says that the demand to be made in respect of the payment of hire in respect of air-conditioning and cold-storage equipment, ''will cease'' on and after July 1, 1967. It is difficult to understand how the Court could grant hire when the parties had not agreed for that hire. Mr. Paranjape submitted that as the Court was allowing the petitioners to continue in possession of the premises and the equipment, the Court had a discretion to fix the hire as compensation, and accordingly* the Court had given the direction, and hence it could not be said that the direction was illegal. This submission must be rejected

because the agreement itself provides that the hire shall cease. It may be that the parties stipulated this having regard to the normal life of the equipment. They cannot ask the Court to pass an order fixing hire or compensation for the use or retention of the equipment contrary to what they had agreed.

20. In the result, the only ground on which the Appellate Bench passed the decree for possession against the petitioners is not justified in law and hence the decree passed by the Appellate Bench on November 28, 1967 against the petitioners is quashed. The decree passed by the trial Judge on January 23, 1962 dismissing the plaintiffs'' suit for possession is restored. However, the direction given by the Appellate Bench with regard to payment of compensation is modified by directing that the petitioners shall pay to the plaintiffs Rs. 6,500 or such other sum as may be fixed as the standard rent in respect of the said building. The order directing the petitioners to pay Rs. 970 for the equipment after July 1, 1967 shall be quashed. From the amounts deposited by the petitioners in the lower Court, amount deposited by them as compensation for the equipment at the rate of Rs. 970 shall be refunded to them in so far as they are deposited in respect of the period after July 1, 1967.

21. Rule made absolute with costs.

