SUPREME COURT OF INDIA

Uttamchand

Vs.

S. M. Lalwani

C.A.No.100 of 1964

(P. B. Gajendragadkar, C.J.I., J. C. Shah and N. Rajagopala Ayyangar, JJ.)

28.08.1964

JUDGEMENT

GAJENDRAGADKAR, C. J.:

1. This appeal by special leave raises a short question as to whether the lease executed by the respondent, Sardar Mal Lalwani in favour of the appellant, Uttamchand, can be said to be a lease of an accommodation within the meaning of S. 3 of the Madhya Pradesh Accommodation Control Act, 1955 (No. XXIII of 1955) (hereinafter called the Act). The appellant moved the Rent Controller to fix the rent payable by him under the lease in question in respect of the property demised to him under S. 9(1) of the Act. This application was resisted by the respondent on the ground that the lease in question did not fall within the protection of the Act as the property demised to the appellant was not accommodation within the meaning of S. 3, and the rent payable by the appellant to the respondent was, therefore, not payable for any accommodation to which the Act applied. The Rent Controlling Authority at Bhopal rejected the respondent's contention and, on the merits, held that Rs. 2,400/- per annum should be the reasonable annual rent payable under the lease.

2. The respondent then went in appeal to the District Judge at Bhopal and urged that the Rent Controlling Authority had no jurisdiction to fix the rent between the parties and, on the merits, the rent fixed was unduly low. The District Judge rejected the respondent's contention as to jurisdiction and held that the lease in question was governed by the provisions of the Act. In regard to the merits of the order passed by the Rent Controlling Authority, The District Judge held that the rent had been fixed by the said Authority more or less arbitrarily without taking into consideration the definition of reasonable annual rent and so, he set aside the order under appeal and remanded the case to the Rent Controlling Authority, directing it to make an enquiry and give its finding as to the reasonable annual rent in accordance with the observations made in his judgment.

3. The respondent then moved the High Court of Madhya Pradesh in its revisional jurisdiction and he challenged the validity of the order of remand on the ground that the lease did not fall within the protection of the Act, and so, the appellant was not entitled to ask for the determination of a reasonable annual rent under S. 9(1) of the Act. This plea has prevailed in the High Court with the result that the respondent's revisional application has been allowed and the application made by the appellant for the fixation of a reasonable annual rent has been dismissed. It is against this order that the appellant has come to this Court by special leave; and the only point which Mr. B. R. L. Iyengar has raised on his behalf is that in coming to the conclusion that S. 9(1) of the Act did not apply to the lease in question, the High Court has misconstrued the character of the lease and has misjudged

the effect of the relevant provisions of the Act.

4. The Act has been passed by the Madhya Pradesh Legislature in 1955 in order to provide for control of letting, and rent of residential and non-residential accommodation and for prevention of the eviction of tenants therefrom. S. 2(1) of the Act provides that accommodations described in cls. (a) to (d) will not be covered by the provisions of the Act. S. 2(d), for instance, provides for places of entertainment generally used as such, including land adjoining or near such places, which is used for entertainment of people or catering. In other words, places of entertainment specified by cl. (d) of S. 2 like other properties mentioned in cls. (a), (b) and (c) of the said section are outside the protection of the Act. S. 2 (2) authorises the Government to exempt from all or any of the provisions of the Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home the whole of the income derived from which is utilised for that institution or nursing home or maternity home.

5. Having thus provided for exemption of certain, accommodations from the provisions of the Act, S. 3 defines the relevant terms used in the Act including the term 'accommodation'. S. 3(a) describes 'accommodation' as meaning:

(x) any land which is not being used for cultivation;

(y) any, building or part of a building, and it includes-

(l) garden, open land and outhouses, if any, appurtenant to such building or part of a building;

(2) any furniture supplied by the landlord for use in such building or part of a building;

(3) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof.

In the present case, we are concerned with a building which includes certain fittings, and so, the point for our decision is whether the lease in question is in respect of an accommodation as defined by S. 3(a) (y) (3).

6. S. 4 imposes restriction on the lessor's power to evict his tenant and it provides that no suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the grounds specified by cls. (a) to (n) of the said section. S. 9 deals with the control of rent. S. 9(1) lays down that the rent payable for any accommodation to which the Act applies shall be such as may be agreed upon between the landlord and the tenant, but in no case shall it exceed the rent calculated on the basis of the reasonable annual rent. The question which we have to decide in the present appeal is whether the rent payable by the appellant to the respondent can be said to be rent payable for any accommodation within the meaning of S. 9 (1). In other words, the basic question which arises between the parties is whether the rent note executed between the parties can be said to be a rent note in respect of an accommodation as defined by S. 3(a) (y) (3). If the answer to this question is against the appellant, the answer to the question as to the applicability of S. 9(1) will also be against him.

7. We must now look at the material clauses of the lease itself. The lease describes the lessor as the owner of the Dal Mill Building situated in Mandi Abidabad, Bhopal and it adds that the said Dal Mill Building has fixed machinery and other accessories described in the schedule to the lease. In other words, the lease is in respect of the Dal Mill Building with fixed machinery and other

accessories. Clause (2) of the lease provides that the lessor has agreed to grant a lease of the said Dal Mill Building with fixed machinery and accessories on the terms and conditions specified in the lease. Cl. 2 (a) demises to the lessee all that Dal Mill Building, fixed machinery and accessories as described in the schedule hereto to hold the same to the lessee from the 12th March, 1957 for the term of one year paying Rs. 6,000/- per year as rent of the lease. Cl. 2(b) contains a covenant binding on the lessee. It provides that the lessee shall pay the rent of one year Rs. 6,000/- to the lessor at the commencement of the lease i.e. the 12th March, 1957, before the sub-Registrar, Bhopal. The possession of the Mill has been given to the lessee in sound working order Cl. 3 contains certain other stipulations. The lessor had to pay the Municipal charges in respect of the land rent on which the said Dal Mill existed. The lessor had to get the Mill Building insured at his cost and expenses and pay the insurance charges. In case the lessor failed to get the Building insured, the responsibility of any loss to the building in case of accident, would be of the lessor. The lessee undertook to return the machinery and other accessories of the said Dal Mill in working order and sound condition, subject to usual wear and tear. Insurance regarding machinery will have to be got done by the lessee at his own cost. The lessor agreed to repair the Building premises whenever necessary and required by the lessee, but the lessee will be responsible for any wilful damage done to the building. The lessee will either repair or replace the same or make good the losses by paying adequate compensation. The lessee had to pay the electrical and water charges in maintaining and running the said Mill. In case during the period of the lease any addition was made to the machinery by the lessee he shall be entitled to take away the additional machinery at the expiry of the lease. The lessee was given the option to renew the lease for another period of one year on the same terms and conditions. The lessee had to give three months' notice before the expiry of the second lease, otherwise the lessor would presume that the lessee has continued the lease on the same terms and conditions but at an annual rent of Rs. 7,200/-. The lessee was prohibited from assigning or underletting or subletting the said Mill or premises or his right therein without the lessor's consent obtained previously in writing. The lessor had the right to terminate the lease at any time after two years, provided he gave three months notice beforehand. The lessor or his agent had a right to enter and inspect the premises and the machinery. The Schedule attached to the lease describes 15 items of the machinery fixed in the building which was covered by the lease.

8. The appellant's case is that the lease in question is a lease mainly of the building itself, and only incidentally it takes in the machinery which had been fixed in the building. In his application, he had alleged that soon after he entered into possession of the building, he found that the machinery was not in order, and so, it was removed and replaced at his own cost, and, according to him, the value of the building was far more than the value of the machinery, and so, the argument was that in determining the question as to whether the lease was in respect of accommodation as defined by S. 3(a) (y) of the Act, the respective values of the building and the machinery should be taken into account. He also urges that the dominant intention of the parties in entering into the transaction of lease was not to enter into a transaction in respect of the machinery as such; it was to enter into a transaction in respect of a building and that makes it a lease for an accommodation as defined by S. 3 (a) (y).

9. In support of this argument, Mr. Iyengar has referred us to two decisions. In Levermore v. Jobey, 1956-2 All ER 362 Jenkins, L. J. has observed that "for the purpose of construing the lease and in particular the tenant's covenant (11) it is permissible for the court, and indeed obligatory on the court, to pay regard to the surrounding circumstances with reference to which the lease was entered into, and in particular to look at the nature of the subject-matter of the letting."

Basing himself on these observations, Mr. Iyengar contends that in construing the nature of the lease

we must not lose sight of the fact that the lease in terms purports to be of the Dal Mill building and machinery comes under the lease only incidentally as having been fixed in the said building.

10. Mr. Iyengar has also relied on the decision of the Andhra Pradesh High Court in K. Venkayya v. Thammana Peda Venkata Subbarao, AIR 1957 Andh Pra 619 at p. 626. Dealing with the question as to the nature of the lease with which the Court was concerned in that case, Viswanatha Sastri J. observed that there is an immense variety of structures which could be styled buildings and added

"we are unable to accede to the proposition that every enclosure of brick, stone work or mud walls covered in by a roof irrespective of the purpose for which it is used and let, is a building within the meaning of the Act". The learned Judge has also remarked that so to construe the Act would bring within its operation all factories and mills which are invariably located in buildings. The question in each case would be what is the dominant part of the demise and what is the purpose for which the building was constructed and let out. In that case, the learned Judge was dealing with the question as to whether the lease before the Court was a building lease within the meaning of the Madras Act 25 of 1949. Mr. Iyengar contends that in construing the lease before us, we must apply the test of the dominant intention of the parties. In our opinion, this contention is well-founded, and so, we must determine the character of the lease by asking ourselves as to what was the dominant intention of the parties in executing the document.

11. As we have already noticed, S. 3 (a) (y) (3) takes within the definition of accommodation any building or part of a building, including any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. There can be no doubt that the fittings of the machinery in the present case cannot be said to be fittings which had been fixed for the more beneficial enjoyment of the building. The fittings to which S. 3(a) (y) (3) refers are obviously fittings made in the building to afford incidental amenities for the person occupying the building. That being so, it is clear that the fittings in question do not fall under S. 3(a) (y) (3). If the fittings in question had attracted the provisions of S. 3(a) (y) (3) there would have been no difficulty in' holding that the lease is in respect of accommodation as defined by the said provision.

12. What then was the dominant intention of the parties when they entered into the present transaction? We have already set out the material terms of the lease and it seems to us plain that the dominant intention of the appellant in accepting the lease from the respondent was to use the building as a Dal Mill. It is true that the document purports to be a lease in respect of the Dal Mill building; but the said description is not decisive of the matter because even if the intention of the parties was to let out the Mill to the appellant, the building would still have to be described as the Dal Mill building. It is not a case where the subject matter of the lease is the building and along with the leased building incidentally passes the fixture of the machinery in regard to the Mill; in truth, it is the Mill which is the subject-matter of the lease, and it was because the Mill was intended to be let out that the building had inevitably to be let out along with the Mill. The fact that the appellant contends that the machinery which was transferred to him under the lease was found to be not very serviceable and that he had to bring in his own machinery, would not alter the character of the transaction. This is not a lease under which the appellant entered into possession for the purpose of residing in the building at all; this is a case where the appellant entered into the lease for the purporse of running the Dal Mill which was located in the building. It is obvious that a Mill, of this kind will have to be located in some building or another, and so, the mere fact that the lease purports to be in respect of the building will not make it a lease in respect of an accommodation as defined by S. 3 (a) (y) (3). The fixtures described in the schedule to the lease are in no sense intended for the more beneficial enjoyment of the building. The fixtures are the primary object which the lease was

intended to cover and the building in which the fixtures are located comes in incidentally. That is why we think the High Court was right in coming to the conclusion that the rent which the appellant had agreed to pay to the respondent under the document in question cannot be said to be rent payable for any accommodation to which the Act applies.

13. It appears that the Rent Controlling Authority as well as the District Judge were impressed by the plea raised by the appellant before them that if a Mill like the Dal Millwith which we are concerned was intended to be exempted from the operation of the Act, S. 2(1) would have expressly provided for such exemption. We have already noticed that S. 2 (1) (d), for instance, expressly exempts places of entertainment herein prescribed. Similarly, cls. (a), (b) and (c) of S. 2(1) make other exemptions. The argument was that since a Mill which is situated in a building is not expressly exempted by S. 2, it would be unreasonable to hold that the lease in the present case is not a lease in respect of an accommodation as defined by S. 3(a) (y)(3). In our opinion, there is no substance in this contention. The fact that a Mill situated in a building is not expressly exempted by S. 2(1) would hardly make any difference, because no lease can attract the provisions of the Act unless it is shown that it is in respect of accommodation as defined by S. 3(a) and that must inevitably take us to the question as to whether the present lease falls under S. 3 (a) (y) (3). If the answer to this question is in the negative, it makes no difference at all, because if the lease is not in respect of accommodation, it is hardly necessary to enquire whether it has been exempted from the operation of the Act.

14. The result is, the appeal fails and is dismissed with costs.

Appeal dismissed.

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