

Khem Chand Dayal Ji and Co.

Vs

Mohammad Bhai Chand Bhai

Civil Appeal No. 808 of 1966

(CJI M. Hidaytullah, S. M. Sirki, R. S. Bachawat, G. K. Mitter, J. M. Shelat, V. Bhargava, J. C. Shah, V. Ramaswami-I, A. N. Grover JJ)

24.03.1969

JUDGMENT

SHAH, J. -

1. The respondent is the owner of a house in the town of Ahmedabad. The appellants are the tenants of that house at monthly rental of Rs. 2,171/-. Under the agreement of lease the appellants were to pay out of the agreed rent Rs. 810/- Per month, and the balance was to be appropriate towards a loan advanced by them to the respondent for constructing the house. The appellants had also agreed to pay municipal taxes and electricity charges.

2. The appellants filed Suit No. 1309 of 1963 in the Court of the Small Causes, Ahmedabad, for an order, inter alia, determining the standard rent of the premises in exercise of the power under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947. The Court of Small Causes, Ahmedabad, on an application filed by the appellants fixed the contractual rent as "interim standard rent" and directed the appellants to pay the rent and municipal taxes. Pursuant to this order, the appellants deposited Rs. 2,403/- as rent and Rs. 8,921-25 due as municipal taxes for the year 1964-64. An application by the respondent to withdraw the amount deposited in Court was resisted by the appellants. The Court permitted the respondent to withdraw Rs. 2,403/- but not the municipal taxes. The respondent then obtained an order for the issue of a distress warrant under Section 53 of the Presidency Small Cause Courts Act 15 of 1882 read with Rule 5 of the Presidency Small Cause Courts Act 15 of 1882 read with Rule 5 of the Rules framed under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for recovery of the amount due as municipal taxes. Distress was levied, and the order was confirmed. A revision application moved in the High Court of Gujarat against that order was rejected.

3. In support of this appeal counsel for the appellants urges that Rule 5 of the Rules framed under Section 49 of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947, is ultra vires the State Government; that the Court of Small Causes Ahmedabad has in any event no jurisdiction to pass an order issuing a distress warrant when trying a suit or proceeding under Bombay Act 57 of 1947 especially when an application for determination of standard rent under Section 11 of the Act is pending; and that the municipal taxes and electricity charges do not constitute rent which may be recovered by the issue of a distress warrant.

4. By the express terms of the tenancy the appellants had undertaken to pay the municipal taxes and electricity charges as part of the rent : it is not open to them to contend that they are not rent recoverable by the issue of a distress warrant. The last branch of the argument has, therefore no

force.

5. The relevant provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947 and other statutes which have a bearing may first be noticed. Bombay Act 57 of 1947 was intended to control rent and to confer protection against eviction upon tenants of premises in certain urban areas in the Province of Bombay. By Section 28 of the Act certain courts were designated as courts of exclusive jurisdiction to entertain and try suits and proceedings between a landlord and tenant, relating to recovery of rent or possession to which the provisions of the Act applied, and also to decide claims or questions arising under the Act. Section 28 as originally enacted and later amended by Bombay Acts 58 of 1949 and 15 of 1952 insofar as it is material reads :

"(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or "proceeding would not, but for this provision, be within its jurisdiction.

(a) in Greater Bombay, the Court of Small Causes, Bombay;

(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts, Act, 1887, such Court and

#(b) X X X X##

shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.

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Section 28 did not set up new Courts to try suits or proceedings between landlords and tenants : it invested existing courts with exclusive jurisdiction to try suits and proceedings of the nature set out and claims or questions arising under the Act. Section 31 of the Act provides inter alia, that the courts specified in Section 28 shall follow the prescribed procedure in trying and hearing suits, proceeding, applications and appeals and in executing orders and made by them. Section 49 authorises the State Government to make rules for the purpose of giving effect to the revisions of the Act and in particular to make rules, among other subjects, for the procedure to be followed in truing or hearing suits, proceedings (including proceedings for execution of decree and distress warrants), applications, appeals and execution of orders. Pursuant to the authority conferred, rules were framed by the Government of Bombay and Rules 5 which dealt with the procedure to be followed by the Court of Small Causes, Bombay, for suits, proceedings, appeals etc. provided insofar as it is material :

The Court of Small Causes, Bombay, shall follow the practice and procedure provided for the time being (a) in the said Act, except Chapter VI thereof, and (b) in the rules made under Section 9 of the said Act."

6. By the enactment of the Bombay Reorganization Act 11 of 1960 a separate State of Gujarat was constituted out of the territory which formed the State of Bombay, and the area within the city limits Ahmedabad formed part of the State of Gujarat. By the Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, clause (a) of sub-section (1) of Section 28 of Bombay Act 57 of 1947 as it was originally enacted was deleted. The Legislature of the State of Gujarat enacted the Ahmedabad City Courts Act 19 of 1961 which by Section 17 provided that the Presidency Small Cause Courts Act, 1882 (XV of 1882), shall extend to and come into force in the city of Ahmedabad on and from the appointed day. By Section 18 it was provided.

"The Presidency Small Cause Courts Act, 1882 (XV of 1882), and the Bombay Rents, Hotel and Lodging House Rates Control Act, (1947 Bom LVII of 1947), shall in their application to the City of Ahmedabad stand amended in the manner and to the extent specified in the Schedule."

By Section 19 it was provided :

"With effect on and from the appointed day X X X X X the Provincial Small Cause Courts Act, 1887 IX of 1887), and all rules, notifications and orders made thereunder shall cease to apply to, or be in force, in the City of Ahmedabad,

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By the Schedule certain amendments were made in the Presidency Small Cause Courts Act, 1882, in its application to the City of Ahmedabad. By Clause 13 of the Schedule, Section 50 of the Presidency Small Cause Courts Act was to apply to every place within the City of Ahmedabad, Certain amendments were also made in Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and in sub-section (1) of Section 28, before Clause (aa) the following clause was inserted :

"(a) in the City of Ahmedabad, the Court of small Cause of Ahmedabad,"

By the enactment of the Ahmedabad City Courts Act, 1961, the proceedings before the Court of small Causes at Ahmedabad were governed by that Act and by virtue of the amendment made in section 28 of Bombay Act 57 of 1947 it became a court of exclusive jurisdiction to try suits, proceedings, claims and questions arising under that Act. Being a Court governed by the Presidency small cause courts Act, the Ahmedabad court of small cause was competent to exercise, subject to the Ahmedabad City Courts Act, all the powers which a Presidency small cause court may exercise, power to issue a distress warrant being expressly conferred by Section 53 of the Presidency Small Cause Courts Act upon the Courts governed by it, the of Small Causes, Ahmedabad, was competent to exercise that power.

7. Rules 5 was framed under the Bombay Act 57 of 1947 in exercise of the authority conferred by Section 49(2)(iii). After the enactment of the Ahmedabad City Courts Act, 1961, Rules 5 as originally framed by the Government of Bombay continued in force by virtue of Section 87 of the Bombay Reorganization Act 11 of 1960, and applied to the Ahmedabad small Causes Court. When Rules 5 was framed under Bombay Act 57 of 1947 it was not ultra vires, and it is not shown to have become ultra vires after the enactment of the Ahmedabad City Act in its application to the City of Ahmedabad.

8. The argument that Section 28 sets up a new of Court with special powers and jurisdiction is without substance.

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