

D. N. Sanghavi and Sons

Vs

Ambalal Tribhuwan Das

Civil Appeal No. 1643 Of 1967

(S. N. Dwivedi, P. K. Goswami JJ)

09.01.1974

JUDGMENT

DWIVEDI, J. -

The facts of this case fall within a short compass. The respondent, Amba Lal Tribhuwan Das, is the owner of the suit accommodation. It is situated in Siyaganj, Indore. The appellants 2 to 4 are carrying on business in the name of the first appellants D. N. Sanghavi and Sons. They are the tenants of the accommodation. Courts below have held that it was being used predominantly as a shop by them and that a part of it was being used by them as their residence for the sake of more efficient conduct of the business they were carrying on in the shop. The respondent purchased the shop some time in 1963. The appellants were then carrying on their business in the shop. They attorned to the respondent. On October 10, 1964 the respondent gave the requisite notice to them to vacate. On November 16, 1964 he instituted a suit for their ejection from the accommodation. It was alleged by him that he needed the accommodation for continuing "his business" with the meaning of Section 12(1) (f) of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter called the Act). At the evidence stage he gave evidence that it was needed for partnership business. There arose two crucial questions in the case : (1) What is the meaning of the phrase "his business" in Section 12(1) (f) ? (2) Whether in the circumstances of the case the business for which he required the accommodation could be said to be "his business". The first question arose because he wanted the accommodation for continuing the business of a partnership firm of which he was one partner. There were two other partners. They are his brothers. The trial Court held against the respondent on the second issue and dismissed the suit. No view was expressed on this issue. The respondent filed an appeal from the judgment. The appeal court reversed the judgment and decreed the suit for ejection of the appellants. The appeal court recorded this finding of fact :

"..... Ambalal (plaintiff) has stated..... that the partnership shop was previously run by his father. It is now run by the brothers in partnership. This business is thus of the family alone. Their shop is at Siyaganj itself where the premises in suit are situated."

On this finding the appeal Court reached the conclusion that business of the partnership firm, of which he is one partner is "his business" within the meaning of Section 12(1) (f) As the firm's business was being carried on in a rented premises, his need was found to be genuine. The appellants then filed an appeal in the Madhya Pradesh High Court from the judgment of the appeal Court. The High Court has upheld the judgment of the appeal Court. It is noteworthy that the appeal Court has simply assumed that the partnership business is "his business." No reasonings are given in support of the conclusion. The High Court agreed with the appeal Court that the firm's business of

which the respondent was one partner is "his business". The reasoning of the High Court in support of this conclusion is summed up in the following passage in the judgment :

"In the present case what we are concerned with is whether the landlord can be said to have the necessity when the need was for the partnership firm. It cannot be doubted that when a person runs a business in partnership with others he does it for himself and therefore his necessity is identified with the necessity of the firm. Whether he wants to do business himself or he does it along with others, it still remains that he needs it for his own purpose."

2. It is evident from this passage that the High Court, like the appeal Court, has overlooked the words of Section 12 (1) (f) in arriving at its conclusion. The High Court considered that it is an elementary proposition of law that a partnership business is the business of each and every partner so that it will be "his business". It seems that the High Court was misled by the apparent meaning of this phrase so that the necessity of examining the scheme of the Act and the setting of clause (f) of Section 12(1) to discover its real meaning was not felt at all. But this is the first thing on which the High Court should have flexed attention. After all, it is a matter of statutory construction. And in such a case all attempts at construction should converge on the statute at hand, lest the reasoning should become abstract and artificial, having no contact with reality. The High Court has sought support from a decision of the erstwhile Nagpur High Court. (*Rajniklal and Co. v. Vithal Pandurang Kawade and another*). Here again, the High Court did not take care to notice the similarities and dissimilarities between the law which fell for consideration in that case and the law which falls for construction in this appeal.

3. With these preliminary comments, we pass on to the real issue : What does "his business" mean in Section 12(1) (f) ? The meaning is to be determined by examining the object of the Act and the setting of the phrase "his business". The Act deals with the difficult problem of scarcity of accommodation and seeks to distribute accommodation in a fair way amongst those who need.

4. The Act professes to control letting and rent of accommodation and the eviction of tenants therefrom. The Act restricts the power of the landlord to let and to rack-rent at will. It also restricts his power to eject the tenant at will. Thus the direct and immediate object of the Act is to ensure occupation of accommodation by them who are in need of it. Broadly speaking, a construction which fulfils this purpose should be preferred to the alternative construction which frustrates it.

5. Chapter III controls eviction of tenants. Section 12 is the first provision in this Chapter. We are now reading the material portions of Section 12 :

"Section 12(1) (e) : that the accommodation let for residential purposes is required bona-fide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned :

(f) that the accommodation let for non-residential purposes is required bona-fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or of any person for whose benefit the accommodation is held and that the landlord or such person has to

other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;

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(4) where a landlord has acquired any accommodation by transfer, no suit for the eviction of tenant shall be maintainable under sub-section (1) on the ground specified in clause (e) or clause (f) thereof, unless a period of one year has elapsed from the date of the acquisition :

(5) where an order for the eviction of a tenant is made on the ground specified in clause (e) of sub-section (1), the landlord shall not be entitled to obtain possession thereof before the expiration of a period of two months from the date of the order;

(6) where an order for the eviction of a tenant is made on the ground specified in clause (f) of sub-section (1), the landlord shall not be entitled to obtain possession thereof -

(a) before the expiration of a period of two months from the date of the order; and

(b) if the accommodation is situated in.... Indore..... unless the landlord pays to the tenants such amount by way of compensation as may be equal to.....

(i) double the amount of the annual standard rent of the accommodation in the following cases -

(a) where the accommodation has, for a period of ten complete years immediately preceding the date on which the landlord filed a suit for possession thereof, been used for business purposes or for any other purpose along with such purposes, by the tenant who is being evicted;

(b) where during the aforesaid period of ten years, the tenant carrying on any business in the accommodation has left it and the tenant immediately succeeding has acquired the business of his predecessor either through transfer or inheritance.

(ii) the amount of the annual standard rent in other cases."

6. Section 17 provides that where, after ejecting the tenant, the landlord does not occupy the accommodation within two months of obtaining possession, or transfers or re-lets it within two years thereof, the Rent Controlling Authority may on an application made in this behalf, by the evicted tenant, direct the landlord to put him in possession of the accommodation or to pay him such compensation as the Rent Controlling Authority may think fit. This compensation shall be over and above the compensation which has already been paid to the tenant under Section 12 (6). In a similar way, Section 18 provides that where the landlord has ejected the tenant for the purpose of repairing or rebuilding the accommodation and does not commence the work of repairing or rebuilding within one month of the date specified in the order for ejection or fails to complete the work in a reasonable time or having completed the work fails to place the tenant in occupation of the accommodation, the Court may, on an application made in this behalf by the tenant, direct the landlord to give possession to the tenant or to pay to him such compensation as the Court may think fit. Section 39(1) requires the landlord to inform the Collector whenever any accommodation has fallen

vacant or is likely to fall vacant. The Collector may then direct him to let or not to let it in accordance with the provision of the Act. Section 39(2) gives preference to certain class of persons in the matter of letting. It is not necessary to mention them here. But the first proviso to Section 39(2) is important for this case. It reads :

"Provided that if the landlord has in the information given..... under Section 39(1) stated that he needs the accommodation for his own occupation, the Collector..... shall, if satisfied after due inquiry that the accommodation so needed is proper, direct the landlord to occupy the same."

Under the proviso the accommodation may be allotted to the landlord if he makes out a case that he needs the accommodation for "his own occupation".

7. A review of these provisions would show that the Act is more strict with respect to the eviction of a tenant from a non-residential accommodation than from a residential accommodation. In the case of a residential accommodation, Section 12(1) (e) provides for the eviction of a tenant where it is needed for the residence of the landlord or for any member of his family. But he cannot sue for eviction of a tenant from a non-residential accommodation where he needs it for continuing or starting his major married daughter's business. Nor he can evict a tenant from such accommodation for continuing or starting his brother's business. Thus while clause (e) of Section 12(1) is more hospitable to the landlord clause whereof is more protective of the tenant. Sub-sections (4), (5) and (6) of Section 12 also point to this contrast. While the tenant evicted from a residential accommodation gets a respite of 14 months, the tenant evicted from a non-residential accommodation gets not only the said respite but also the prescribed compensation. In many cases the burden compensation may act as a deterrent to eviction. Having regard to the rigour of clause (f) of Section 12(1) we think that the phrase "his business" should not receive a wide construction as to the class of persons who may be included in the possessive pronoun 'his' in the phrase for it would be against legislative policy.

8. Section 39 controls the letting of an accommodation, residential as well as non-residential, which has fallen vacant. The first proviso to sub-section (2) of Section 39 provides that at the request of the landlord such accommodation may be allotted to him if he needs it "for his own occupation". As Section 39 deals with a residential as well as a non-residence or business". Clauses (e) and (f) of Section 12 (1) are complimentary to the first proviso to Section 39(2). While the first proviso enables the landlord to obtain possession of a vacant accommodation for his own occupation by way of residence or business, Section 12 (1) (e) enables him to obtain a residential, accommodation of his or his family's residence by ejecting a tenant, Similarly, Section 12(1) (f) enables him to obtain a non-residential accommodation for continuing or starting "his business" by ejecting the tenant. Considering the complimentary nature of Section 12(1) (f), we have little doubt in our mind that the words "for the purpose of continuing or starting his business" in the Section should be amplified to read as "for the purpose of his own occupation by way of continuing or starting his business". It cannot be legitimately complained that we are trying to redraft clause (f). This amplification is necessarily implied, for we think that the Legislature intended to use the phrase "for the purpose of continuing or starting his business." as a synonym for the phrase "for his own occupation" in the first proviso to Section 39(2) as explained earlier. The words "in his occupation" at the end of clause (f) fortify our construction. Again, the word "own" in the phrase "his own occupation" should not be discarded as redundant. It seems to us that the Legislature has deliberately used it to add emphasis to the possessive force of the pronoun "his" (See the Shorter Oxford Dictionary, 3rd edn. P. 1409). It connoted the idea that the accommodation is needed directly and substantially for his occupation.

9. On this construction of clause (f) of Section 12(1), it is necessary for the respondent to prove that the accommodation is needed directly and substantially for his occupation for the purpose of continuing or starting his business.

10. The respondent has stated in his evidence that he and two brothers are carrying on a partnership business in a rented shop in Siyaganj. He has further said that he needs the suit accommodation for that purpose. The appeal Court has believed this evidence and has recorded the finding that the respondent bona-fide requires the accommodation for his partnership business. But this finding does not fulfil the conditions of clause (f) of Section 12(1) as construed by us.

Unfortunately for him, the respondent did not lead any evidence to show that the accommodation was needed directly and substantially for his occupation by way of business. He filed the registration certificate showing that the partnership was registered with the Registrar of Firms. The certificate will only prove as to who are the partners of the firm, nothing more. The respondent did not file the deed of partnership. It would have disclosed whether the respondent is a mere sleeping partner or a partner or a partner, or that they are the sole managing partners. In this examination he has said that he was a partner in the firm. He had also said :

"There is no proper accommodation for carrying on business in Indore by the members of his family."

In cross-examination he has said :

"In the members of my family there are two of my brothers Nand Kishore and Mani Lal, their wives and children and my mother are included. For our residence and running the shop we need the disputed shop".

No doubt he has stated that he needs the suit accommodation for his residence also, but the lower courts did not examine the need for residence. Before the appeal Court Counsel for the parties had stated that the suit for eviction of the tenant should be disposed of only on the basis of Section 12(1) (f). The respondent thus abandoned his case based on Section 12(1) (e) which deals with residential accommodation. So we are concerned with his need for business accommodation. The passage in his statement, earlier reproduced would seem to suggest that his notion of "his business" is inclusive of his brothers' business in which he may have no concern at all. So the possibility of his brothers' Separate business being set up in the suit accommodation is not ruled out. However, we do not ground our judgment on his statement. In his evidence he has said :

"We, the three brothers and father are the partners in the shop. There is no person from outside. Before the partnership my father used to run the shop. (The father died during pendency of the suit)."

He also said :

"We deal in bidi, cigarettes, matches, tobacco and soap. We also want to have the same business in the disputed shop."

In neither of these two passages nor anywhere else in the evidence he has stated that on the terms of partnership he is entitled to manage the partnership business or even that he would also occupy the suit accommodation along with his partners on obtaining possession from the appellants. He has also not said that the other partners have agreed to shift the business.

11. If the deed of partnership has excluded him expressly or impliedly from the management of firm's business and has made him a sleeping partner, it cannot be held that the accommodation is needed directly and substantially for his occupation by way of business. Nor he has power to shift the business. To sum up, for the reasons already given, his suit should fail.

12. Counsel have referred us to a large number of decisions. Such of them as appear to us to be relevant in this case will alone be noticed by us. We shall make no reference to the others.

13. In *Rajniklal and Co. (supra)* the decision turned on the meaning of the phrase "business of his own" in clause 13(3) (vi) (c) of the C.P. and Berar

14. In *Tansukhdas Chhaganlal v. Smt. Shambai*, the Nagpur High Court has held that where a tenant carrying on business in the demised shop the business into a partnership business and allows the latter business to be carried on in the demised premises, it would amount to sub-letting because the partnership "was clearly a personality in law distinct from that of the petitioner himself". There also, the High Court was concerned with clause 13 of the aforesaid Order. This statement of law does not appear to be universally true. However, as pointed out earlier, in respect of *Rajniklal (supra)* it is sufficient for us to say that this case also is not helpful in this appeal.

15. *Commissioner of Income-tax, West Bengal v. A. W. Figgies and C. and Dulichand Lakshminarayan v. The Commissioner of Income-tax, Nagpur* are concerned with the legal character of a firm, in the Income-tax Act. It is held that a firm is a distinct entity different from its partners for purposes of assessment. These decisions are based on particular provisions of that Act which are radically different from the provisions of the Act. So these cases are also not helpful in deciding the present appeal.

16. *Karsandas Ramji, v. Karsanji Kalyanji and Gundalapalli Rangamannar Chetty v. Desu Rangiah* discuss the very question which fell for consideration in *Tansukhdas Chhaganlal (supra)*. It was held on the facts of these cases that the tenant could not be held to have sub-let the rented premises to the partnership firm because they retained possession over the premises. These cases thus apply the test of occupation by the tenant in finding out whether he has or has not sub-let. These are all the relevant Indian cases cited before us. *Sri Patel* has also relied on three English cases : *Clift v. Taylor*, *Tunstall v. Steigmann* and *Gian Singh & Co. v. Devraj Narar and Others*. *Clift* takes the same view as *Rajniklal (supra)*. The decision turned on the meaning of the expression "required the premises for his own occupation" in Section 5 (3) (b) (i) of the Landlord and Tenant Act, 1927. There the landlord carried on a business in a part of the building in dispute; in another part of it the tenant carried on her business. On the eve of the expiry of her lease, she applied for a new lease. Her application was opposed by the landlord on the ground, inter alia, that he required the tenant to convert his own business into a partnership business. There were six partners including himself. The partnership business had extended considerably so that there was scarcity of accommodation. It appeared that the landlord needed the demised premises for the purpose of his partnership business. So the issue was whether he needed the premises "for his own occupation". The findings were :

" (T) he firm and he himself, as its senior partner, had great need for less cramped head office premises and, in particular, for the free and full use of the ground floor on street level as essential to convenience of office work, for clients, and for display of notices etc., and indeed, it was necessary for the prosperity of the greatly enlarged and still growing business with its ramifications into many allied or compatible departments or activities."

It is evident from this finding that the landlord was a managing partner and that he himself along with the firm was to occupy the demised after getting possession. This decision far from helping Sri Patel, helps the appellants in view of the construction placed by us on clause (f) of Section 12(1). Tunstall (supra) deals with an entirely different set of facts. There the landlord was carrying on business. She gave notice to the tenant that she wanted the rented shop for her own business. The notice was given under the Landlord and Tenant Act, 1954. In the meantime she transferred her business to an incorporated company. The relevant words of Section 31(g) of that Act are "to occupy the holding for the purpose.... of the business to be carried on by the landlord". It was held that the business of an incorporated company was not the business of the landlord, the company being a distinct legal person different from the landlord. Gian Singh (supra) was concerned with the construction of a particular clause in a covenant forbidding the tenant from assigning his tenancy to a third person. It is claimed by the landlord that the tenant has assigned the premises to a held that there was no assignment. We fail to appreciate how these cases help Sri Patel.

17. In some of the cases cited by Sri Patel, 'own' has been interpreted virtually as otiose. Nevertheless what it means in the Act would depend on its own context, for a word may take a colour from its context.

18. In view of our decision against the respondent on the basis of the construction of Section 12(1) (f), it is not necessary for us to decide several other points raised by Sri Phadke.

19. The appeal is allowed with costs (one set only). The decision of the courts below are set aside and the suit of the respondent is dismissed.

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