

M/S. India Pipe Fitting Co.

Vs

Fakruddin M. A. Baker and Another

Civil Appeal No. 1725 of 1972

(N. L. Untwalia, P. K. Goswami JJ )

04.11.1977

JUDGMENT

GOSWAMI, J. -

1. This appeal by special leave is directed against the judgment and order of the Bombay High Court in an application under Article 227 of the Constitution against the judgment and decree of February 29, 1968, passed by the Appellate Bench of the Small Causes Court at Bombay by which it affirmed the earlier decree of July 22, 1962 of the Small Causes Court at Bombay in Suit 4271 of 1959 dismissing the respondent's suit.

2. There is no dispute in this appeal that the appellant is the tenant and the first respondent is the landlord. It is not necessary to describe the history of the assignment of the tenancy as well as the transfer of the ownership of the premises to the first respondent from his father who was the original landlord under which another party continued as tenant till May 1, 1951, when the present appellant became the tenant by purchasing the goodwill and the tenancy rights of the shop along with the stock-in-trade furniture, fixture, etc., from the original tenant Messrs United Tube & Hardware Co. The tenancy is in respect of the premises being shop 1 on the ground floor of the building known as "Asghar Manzil" at 146, Nagdevi Street, Bombay, "predominantly a locality for the business of hardware and pipe-fitting". The Manzil has a ground floor and three other storeys. The entire property has been let out by the respondent to different persons. The appellant carries on the business of hardware and pipe-fitting in this shop. The respondent sought to evict the appellant by instituting a suit in the Small Causes Court on March 17, 1959, founding his claim on several grounds but we are confined in this appeal only to the respondent's bona fide and reasonable requirement of the premises for his own use and occupation "as an architect and engineering designer" to run his "office-cum-studio-cum-show-room" therein. "The dimensions of the suit premises are 5 1/2(9)(63) feet". The other grounds, namely, of sub-letting and irregular payment of rent were given up. The trial Court dismissed the suit on July 2, 1962, holding that the premises were not reasonably and bona fide required by the respondent. The Court also held that greater hardship would be caused to the tenant if the decree in ejectment were passed. The respondent's appeal to the Appellate Bench of the Small Causes Court met with the same fate and the findings of the trial Court were affirmed. That led to the application under Article 227 of the Constitution before the High Court at the instance of the Landlord. This time the landlord was successful as the learned single Judge of the High Court allowed the petition on June 23, 1972, interfering with the concurrent findings of fact and held that the landlord's requirement was reasonable and bona fide and there was no question of greater hardship to the tenant.

3. The learned Judge of the High Court observed :

In my judgment, every one of the reasons and the entire approach of the learned Judges of the Appellate Bench was perverse and shows a lack of awareness of the conditions of accommodation in Bombay, at all times material to the suit and even now.

The learned Judge further observed that "it seems that in the view of the learned trial Judge, richer the man greater the hardship to him and poorer the man lesser the hardship to him . . .".

4. The appellant made a grievance before us that learned Judge of the High Court did not grant any time to him to obtain stay orders from the Supreme Court which was then in vacation. Anyway, the appellant moved the learned Vacation Judge of this Court (Mathew, J.) on June 30, 1972, and obtained ex parte stay of eviction and later obtained special leave to appeal after notice of motion. That is how the matter has come before us.

5. The limitation of the High Court while exercising power under Article 227 of the Constitution is well-settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however erroneous those may be. It is well-settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in Waryam Singh v. Amarnath [1954 SCR 565 : AIR 1954 SC 215 : 1954 SCJ 290] where the principles have been clearly laid down as follows :

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee [AIR 1951 Cal 193] to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

The same view was reiterated by another Constitution Bench of this Court in Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam [1958 SCR 1240 : AIR 1958 SC 398 : 1958 SCJ 798]. Even recently in Bathutmal Raichand Oswal v. Laxmibai R. Tarta [(1975) 1 SCC 858], dealing with a litigation between a landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court relying on its earlier decisions observed as follows :

If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be involved to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot be in guise of exercising its jurisdiction under Article 227 convert itself a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.

6. Whether the landlord's requirement is bona fide and reasonable has been concurrently found by the two Courts below against the landlord by appreciating the entire evidence. After examining the reasons given by both the Courts it is not possible to hold that the conclusions are "perverse" or even that these are against the weight of evidence on record. It is a case of reasonably possible factual appreciation of the entire evidence and circumstances brought on the record.

7. It is possible that another Court may be able to take a different view of the matter by appreciating the evidence in a different manner, if it determinedly chooses to do so. However, with respect to the

learned Judge (Vaidya, J.) that will not be justice administered according to law to which courts are committed notwithstanding dissertation, in season and out of season, about philosophies.

8. We are clearly of opinion that there was no justification for interference in this case with the conclusion of facts by the High Court under Article 227 of the Constitution. We are also unable to agree with the High Court that there was anything so grossly wrong and unjust or shocking the Court's "conscience" that it was absolutely necessary in the interest of justice for the High Court to step in under Article 227 of the Constitution. Counsel on both sides took us through the reasonings given by the High Court as well as by the Courts below and we are unable to hold that the High Court was at all correct in exercising its power under Article 227 of the Constitution to interfere with the decision of the Courts below. In our opinion the High Court arrogated to itself the powers of a court of appeal, which it did not possess under the law, and has exceeded its jurisdiction under Article 227 of the Constitution.

9. In the result the appeal is allowed. The judgment and order of the High Court are set aside and those of the trial Court and the Appellate Bench are restored. Since there was an order at the time of granting the special leave that costs would be borne by the appellant in any event, the first respondent will be entitled to his costs in this appeal.

</html