

Sant Ram

Vs

Rajinder Lal and Others

Civil Appeal No. 1526 of 1978

(V. R. Krishna Iyer, D. A. Desai, A. P. Sen JJ)

22.09.1978

JUDGMENT

KRISHNA IYER, J. –

1. A small event may mark a great portent as this tiny proceeding for eviction, from a mini-shop of a little man, will presently disclose.

2. The appellant, a harijan by birth and a cobbler by vocation, was a petty tenant of the eastern half of a shop in Ram Bazar, Simla. The original landlord passed away and his sons, the respondents, stepped into his shoes as legal representatives. He filed a petition for eviction of the appellant-tenant under Section 13(2) (ii)(b) of the East Punjab Urban Rent Restriction Act, 1949, as applied to Himachal Pradesh on ground that the premises were being used for a purpose other than the one for which they were let out. The Rent Controller having held in favour of the landlord, an eviction order ensued. The appellate authority reversed this finding and dismissed the petition for eviction. The High Court, in revision, reversed the appellate decision and restored the Rent Controller's order. The cobbler-appellant, in the last lap of litigation, has landed in this Court. The poverty of the appellant is reflected in the chequered career of the case in this Court where it was dismissed more than once for default in payment but ultimately, thanks to the persistence of the appellant, he got this Court's order to pay the balance amount extended. He complied with that direction and thus could not be priced out of the justice market, if we may use that expression.

3. The short point for adjudication is as to whether the respondent landlord made out the statutory ground for eviction, of having diverted the building for a use radically different from the one for which it was let, without his consent. There is no case of written consent put forward by the tenant. But he contested the landlord's claim by asserting that there was no specific commercial purpose inscribed in the demise and, therefore, it was not possible to postulate a diversion of purpose. Secondly, he urged that, even assuming that the letting was for a commercial purpose, the fact that he had cooked his food or stayed at night in the rear portion of the small shop did not offend against Section 13(2)(ii)(b) of the Act.

Section 13(2)(ii)(b) reads :

used the building for a purpose other than that for which it was leased

4. The factual matrix may be shortly projected for as Mr. Justice Cardozo luminously stated : (Benjamin Nathan Cardozo : What Medicine Can do for Law, address before the New York Academy of Medicine, November 1, 1928 - Readings in Law and Psychiatry)

More and more we lawyer are awaking to a perception of the truth that what divides and distracts us in the solution of a legal problem is not so much uncertainly about the law as uncertainly about the facts-the facts which generate the law. Let the facts be known as they are, and the law will sprout from the seed and turn its branches toward the light.

A cobbler - the appellant - was the lessee of a portion of a shop in Ram Bazar, Simla, since 1963, on an annual rent of Rs. 300 (i.e. Rs. 25 per month). Ex. P 1, the lease deed, disclosed no purpose; but inferentially it has been held by the High Court that the lease being of a shop the purpose must have been commercial. Possible; not necessarily sure. The actual life situations and urban conditions of India, especially where poor tradesmen like cobblers, candlestick makers, cycle repairers and tanduri bakers, take out small spaces on rent, do not warrant an irresistible inference that if the lease if of a shop the purpose of the lease must be commercial. It is common knowledge that in the small towns - why, even in the big cities, - little men plying little crafts and possessing little resource take on lease little work places to trade and the live, the two being interlaced for the lower, larger bracket of Indian humanity. You struggle to make a small income and work late into the night from early in the morn and, during intervals, rest your bones in the same place, drawing down the shutters of the shop for a while. The primary purpose is to ply a petty trade, the secondary, but necessary incident is to sleep in the same place since you can hardly afford anything but a pavement for the creature needs of cooking food, washing yourself, sleeping for a time and the like.

5. The life style of the people shapes the profile of the law and not vice versa. Law, not being an abstraction but a pragmatic exercise, the legal inference to be drawn from a lease deed is conditioned by the prevailing circumstances. The intention of parties from which we spell out the purpose of the lease is to be garnered from the social milieu. Thus viewed, it is difficult to hold, especially when the lease has not spelt it out precisely that the purpose was exclusively commercial and incompatible with any residential use, even of a portion.

6. Two rules must be remembered while interpreting deeds and statutes. The first one is : (Lux Gentium Lex - Then and Now 1799, p. 7)

[I]n drafting it is not enough to gain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand.

The second one is more important for the Third World countries. Statutory construction, so long as law is at the service of life, cannot be divorced from the social setting. That is why, welfare legislation like the one with which we are now concerned, must be interpreted in the Third World perspective. We are not on the Fifth Avenue or Westend of London. We are in a hilly region of an Indian town with indigents struggling to live and huddling for want of accommodation. The law itself is intended to protect tenants from unreasonable eviction and is, therefore, loaded a little in favour of that class of beneficiaries. When interpreting the text of such provisions - and this hold good in reading the meaning of documents regulating the relations between the weaker and the stronger contracting parties - we must remember what in an earlier decision of this Court, has been observed : (Moti Ram v. State of M. P., (1978) 4 SCC 47 : 1978 SCC (Cri) 485)

Where doubts arise the Gandhian talisman becomes a tool of interpretation; "Whenever you are in doubt apply the following test. Recall the fact of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him".

If we remember these two rules, the conclusion is easy that there is no exclusiveness of purpose that can be spelt out the lease deed. That knocks out the bottom of the case of the landlord.

7. The circumstances are clearer as we proceed further. For well over a decade the tenant has been in occupation, cobbling and sleeping in the same place on working days, but going home on days when the shop is closed. Indeed, the pathetic genesis of the residential user cannot be lost sight of. The cobbler's wife became mentally deranged and he could not leave her at home lest she should prove a danger to herself and to others around. Being a harijan cobbler he could not hire servants and so, in despair, he took his insane wife to the place where he was toiling on leather. He worked in the shop, cooked food for his wife, slept there at night and thus managed to survive although she died a little later. "A bed by night and a chest of drawers by day" is not unusual even in England, as those Who have read Goldsmith know. The dual uses of accommodation are common enough and, in this case, the landlord himself appears to have understood it that way. The evidence shows that the sympathetic father of the respondents had not objected to the petitioner living in the premises and had even provided a sink in the shop to facilitate such user. Not that oral permission to divert the user to a different purpose is sufficient in the face of the statutory requirement of written consent but that the circumstance of the landlord's acquiescence over a long stretch of time reinforces the case of the tenant that the purpose was twofold. The common experience of life lends credence to this case and none but those who live in ivory towers can refuse to look at the raw realities of life while administering justice. We are in the field of Poverty Jurisprudence.

8. It is impossible to hold that if a tenant who takes out petty premises for carrying on a small trade also stays in the rear portion, cooks and eat, he so disastrously perverts the purpose of the lease. A different 'purpose' in the context is not minor variations but majuscule in mode of enjoyment. This is not a case of a man switching over to a canteen business or closing down the cobbler shop and converting the place into a residential accommodation. On the other hand, the common case is that the cobbler continued to be cobbler and stayed in the shop at night on days when he was running his shop but left for his home on shop holidays. A sense of proportion in social assessment is of judicial essence.

9. The irresistible inference, despite the ingenious argument to the contrary, is that the provision of Section 13(2) (ii) has not been attracted. We are comforted in the thought that our conclusion is a realistic one, as is apparent from a subsequent amendment to the definition of non-residential building which reads thus;

(d) "non-residential building" means a building being used, -

(i) mainly for the purpose of business or trade; or

(ii) part for the purpose of business or trade and partly for the purpose of residence, subject to the condition that the person who carries on business or trade in the building resides there :

Provided that if a building is let out for residential and non-residential purpose separately to more than one person, the portion there of let out for the purpose of residence shall not be treated as a non-residential building.

Explanation. - Where a building is used mainly for the purpose of business or trade, it shall be deemed to be a non-residential building even though a small portion thereof is used for the purpose

of residence.

10. Shri Bhatt raised an argument that this provision was applicable to pending proceedings. We do not have to investigate into that question in the view we have already taken and note the amendment only to indicate that the legislature, in its realism, has veered round expressly to approve de jure what is the de facto situation prevailing in the urban areas of Himachal Pradesh.

11. In this view, the appeal is allowed with costs. The tenant shall not be ejected. If he has been, as in this case it is stated he has been, the tenant shall be restituted into possession by the trial Court under section 144, C.P.C. Within one month ignoring the fact that some other tenant is inducted by the landlord.

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