

Daya Krishna Mehra

Vs

Miss Nasreen Fazalbah and Others

Civil Appeal No. 2298 of 1978

(V. R. Krishna Iyer, O. chinnappa Reddy JJ)

24.04.1980

JUDGEMENT

KRISHNA IYER, J. –

1. In this appeal, by an order of this Court dated January 3, 1979, two questions were referred to the Small Causes Court, Bombay. The case related to the relief of eviction of premises in the crowded city of Bombay. Those two questions were : (a) the status of the appellant as a tenant or protected licensee; and (b) the evaluation of the comparative hardship in the event of eviction. These two questions were considered pursuant to the direction of this Court and findings have been sent. To appreciate the findings we must also remember that the rent control law in Bombay provides for partial eviction, if circumstances justify it. The appellant's contention that he is a protected licensee, has been upheld. And looking at the problem of comparative hardship and alleviation thereof by partial eviction, the Small Causes Court took the view that the premises may be divided into halves having regard to the realities of the location and the placement of the rules.

2. These findings meet with our approval although counsel on both sides have raised two points for our consideration. Shri Sanghi, appearing for the respondent-landlords has pleaded with perseverance for a sense of reasonableness on the part of the appellant in the actual division of the accommodation. He has produced a plan drawn up by a competent architect and has appealed to the court to reconsider the allocation of rooms on the lines of the architect's design. Shri Mridul, appearing for the appellant-tenant, submits that reopening the question will lead to further troubles and injustices and, therefore, he opposes any disturbance of the finding of the Small Causes Court. Being essentially a question of fact decided by the Small Causes Court, after hearing both sides, we are not in a position to reopen and realign or reallocate. Ultimately, a certain minimal injustice is unavoidable in a situation of acute accommodation scarcity. All that we can say is that in the rough-and-tumble of life, after both sides have settled down, good sense may prevail and what conduces to the harmonious relation of both will, hopefully, be adopted. So far as we are concerned, we are not inclined to interfere with the findings of the Small Causes Court and decide the appeal in terms of its findings.

3. Shri Mridul has prayed for a reasonable time for vacating part of the accommodation from where he is directed to be evicted. It is true that in Bombay the problem is very difficult to secure alternative accommodation but it is also true that to refuse the relief of possession for the respondent after a long-drawn-out litigation is injustice. Having regard to all these factors and the equities of the situation, we permit the appellant to vacate from the portion of the premises directed to be vacated within three months from now. Of course the appellant will, within ten days from today, give an undertaking to this Court on the following triple conditions, viz : (a) that he will give vacant

possession without need for execution proceedings; (b) that he will not induct anybody else into occupation of any part of the premises or otherwise assign or part with possession; and (c) that he will continue to pay regularly a sum equal to the rent that has been fixed between the parties by way of damages for use and occupation. If the undertaking is not furnished or any of the terms of the undertaking is violated the time granted will stand forfeited.

4. The tenant-appellant will continue to pay, after he vacates from half the premises, a rent equal to half the original rent.

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