

Bhaichand Ratanshi

Vs

Laxmishanker Tribhoyan

Civil Appeal No. 1006 of 1971

(O. Chinnappa Reddy, A.P. Sen, Baharul Islam JJ)

29.07.1981

JUDGMENT

A.P. SEN, J. –

1. This appeal, by special leave from a judgment of the Gujarat High Court, involves the question of comparative hardship under Section 13(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - for brevity 'the Act'.

2. First as to the facts. The appellant-plaintiff is a merchant who was settled in Africa and was carrying on business in Kampala in Uganda. Due to political upheaval in that country, he along with his family migrated to India in 1964 and began living in a rented house at Rajkot, where he owns a building known as 'Trivedi House'. On September 21, 1964 he brought a suit for eviction of the respondent-defendant, Laxmishanker Tribhoyan, from the suit premises, which consists of a shop on the ground floor of the said building, on the ground that he reasonably and bona fide required the suit premises for starting his business. The defendant denied the claim and pleaded that the plaintiff did not want to settle down at Rajkot and had already gone back to Africa and that, in any event, even if the plaintiff's alleged need under Section 13(1)(g) of the Act were proved, no decree for eviction could be passed because of comparative hardship by reason of Section 13(2) of the Act. It was alleged that the defendant was a man of slender means and had built up a good-will by running his business from the suit premises over the years and he would be put to greater hardship as it would disrupt his business if he were evicted therefrom.

3. The court of the first instance as well as the District Judge in appeal upheld the plaintiff's claim under Section 13(1)(g) of the Act and decreed the suit. In revision, the High Court held that the finding of the courts below as to the plaintiff's need to be reasonable and bona fide being a finding of fact could not be interfered with under Section 29(2) of the Act, but non-suited the plaintiff on the ground of comparative hardship under Section 13(2) of the Act. As regards comparative hardship, both the courts below held that the defendant was not in actual possession of the suit premises, but had inducted one Labhshanker as his licensee, who was in occupation thereof, and, therefore, the question of hardship under Section 13(2) of the Act did not arise. They further held that the licensee, Labhshanker, owned a separate shop of his own from where he was carrying on his business and had taken the suit premises from the defendant for using it as a godown and, therefore, there was no question of any hardship to him as he would be put to the inconvenience of shifting his goods to his own shop. The High Court, however, differed from the courts below and held that the defendant would be put to greater hardship. In coming to that conclusion, the High Court observes :

Although the defendant Laxmishanker Tribhoyan was not in actual occupation of the

shop, the aforesaid Labhshanker was running the business on his behalf and paying the defendant a fixed amount of maintenance because he was aged and infirm and also because he was his uncle and, therefore, if we were to confirm the decree for eviction of the courts below, the defendant would be deprived of his only source of livelihood for he was dependent on Labhshanker who was running his business from the suit premises.

As regards the plaintiff, the High Court was pleased to observe :

Now so far as the plaintiff is concerned, he has his one leg in Rajkot and another in Africa. Therefore, there is still uncertainty of his settling down in Rajkot.

In that view of the matter it held that no decree for eviction under Section 13(1)(g) of the Act can be passed and accordingly reversed the decree of the courts below.

4. Section 13(2) of the Act reads as follows :

No decree for eviction shall be passed on the ground specified in clause (g) of subsection (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.

It is plain upon the language of Section 13(2) of the Act that it creates a further fetter on the power of the courts to pass a decree for eviction once it held a favour of the plaintiff on the issue of reasonable and bona fide requirement under Section 13(1)(g) of the Act. The words "No decree for eviction shall be passed" make it incumbent on the court not to pass a decree on the ground specified under Section 13(1)(g) of the Act unless it is satisfied as to the comparative hardship caused to the landlord and the tenant by passing a decree than by refusing it. In dealing with the question, the court is not only concerned with the hardship of the landlord and the tenant and not to a complete stranger. Under Section 13(2) of the Act, if there is greater hardship to the tenant, the court should refrain from making an order for eviction under Section 13(1)(g) of the Act. On the other hand, if the making of an order of eviction under Section 13(1)(g) of the Act would cause no such hardship, the court has no jurisdiction but to pass such an order.

5. The Legislature by enacting Section 13(2) of the Act seeks to strike a just balance between the landlord and the tenant so that the order of eviction under Section 13(1)(g) of the Act does not cause any hardship to either side. The considerations that weigh in striking a just balance between the landlord and the tenant were indicated in a series of decisions of the Court of Appeal, interpreting an analogous provision of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (c. 32), Section 3(1), Schedule I, para (h) : *Sims v. Wilson* ((1946) 2 All ER 261 (CA)); *Fowle v. Bell* ((1946) 2 All ER 668 (CA)); *Smith v. Penny* ((1946) 2 All ER 672 (CA)); *Chandler v. Strevett* ((1947) 1 All ER 164 (CA)) and *Kelley v. Goodwin* ((1947) 1 All ER 810 (CA)). One of the most important factors in considering the question of greater hardship is whether other reasonable accommodation is available to the landlord or the tenant. The court would have to put in the scale

other circumstances which would tilt the balance of hardship on either side, including financial means available to them for securing alternative accommodation either by purchase or by hiring one, the nature and extent of the business or other requirement of residential accommodation, as the case may be. It must, however, be observed that the existence of alternative accommodation on both sides is an important but not a decisive factor. (HALSBURY'S LAWS OF ENGLAND, 3rd Edn., Vol 23, p. 824) On the issue of greater hardship the English courts have uniformly laid down that the burden of proof is on the tenant. We are inclined to the view that on the terms of Section 13(2) of the Act, the decision cannot turn on mere burden of proof, but both the parties must lead evidence. The question whether or not there would be greater hardship caused to the tenant by passing the decree must necessarily depend on facts and circumstances of each case.

6. Under Section 29(2) of the Act as substituted by Gujarat Act 18 of 1965, although the High Court has a wider jurisdiction than the one exercisable under Section 115 of the Code of Civil Procedure, 1908, its revisional jurisdiction could only be exercised for a limited purpose with a view to satisfying itself that the decision was according to law. It cannot be said that the courts below failed to apply their mind to the requirements of Section 13(2) of the Act as to comparative hardship or their finding was manifestly perverse or erroneous. That being so, the High Court could not substitute its own finding for the one reached by the courts below on a reappraisal of the evidence.

7. It is indeed difficult to appreciate the line of reasoning adopted by the High Court in non-suiting the plaintiff. On the admitted facts, the plaintiff is a displaced person from Africa and was carrying on business in Kampala in Uganda. Due to political upheaval in that country, in 1964 he, along with his family, migrated to India and began living in a rented house in Rajkot. He proved that he reasonably and bona fide required the suit premises under Section 13(1)(g) of the Act. Admittedly, he has the requisite experience and wherewithal to carry on business, as it is on record that he has been carrying on business in Kampala for over 30 years. The mere fact that the plaintiff had gone back to Uganda for winding up his business there, is not a circumstance against him. On the contrary, it was indicative of his intention to start his business from the suit premises. As against this, the defendant was not in actual possession of the suit premises but had placed one Labhshanker in occupation thereof who had a separate shop of his own and using the suit premises as a godown. Merely because the defendant who was aged and infirm and Labhshanker as his licensee and under an arrangement was paying a fixed amount to the defendant by way of maintenance did not imply that the passing of a decree under Section 13(1)(g) of the Act would cause greater hardship to the defendant than to the plaintiff. Further, the High Court failed to appreciate that perhaps old age and infirmity might have been relevant considerations in judging the issue of greater hardship under Section 13(2) of the Act if the defendant were himself to carry on business from the suit premises and not where, as here, he had admittedly parted with possession in favour of a stranger. It was clearly in error in spelling out a new case for the defendant of the so-called arrangement between himself and a stranger, Labhshanker, for which there is no foundation in the pleadings and which could not in law be pleaded in answer to the plaintiff's claim under Section 13(1)(g) of the Act. That apart, during the pendency of the appeal, the defendant Laxmishanker Tribhoyan having died, the question of greater hardship under Section 13(2) of the Act does not arise.

8. For all these reasons, the judgment and order of the Gujarat High Court are set aside and the judgment and decree passed by the courts below decreeing the plaintiff's suit for eviction under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, are restored with costs throughout.

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