

Ludhichem Agencies and Others

Vs

Ahmed R. V. Peer Mohamed and Another

Special Leave Petitions (Civil) Nos. 5631 and 5632 of 1981

(R.S. Pathak, Baharul Islam JJ)

15.09.1981

ORDER

1. This and the connected petitions pray for special leave to appeal to this Court against the refusal of the Bombay High Court to grant relief under Article 227 of the Constitution in the matter of the dismissal of six declaratory suits filed by the petitioners.
2. The first respondent, Ahmed R.V. Peer Mohamed, is the owner of a property "Peerbhai Mansion", situate on Vithalbhai Patel Road, Bombay. He let out the entire first floor to the second respondent, Smt. Saraswatibai Dahyabhai Bhatt. The first floor consisted of a hall and three rooms and an adjoining terrace. It seems that Saraswatibai sub-divided the hall into a number of cabins, and transferred them to the occupation of the petitioners in this and the connected special leave petitions. The landlord served a notice dated July 28, 1962 on her terminating her tenancy and thereafter filed an ejectment suit No. 576/5157 of 1962. A decree for ejectment was passed in 1966. An appeal by Saraswatibai was dismissed in 1972. The landlord took out execution of the decree. Obstructionist notice was served on all the petitioners and was made absolute in favour of the landlord on February 27, 1974. The petitioners appealed, and on November 30, 1976 these appeals were dismissed.
3. The six petitioners then filed separate suits Nos. 5734 of 5739 of 1976 against the landlord for a declaration that they were lawful sub-tenants or licensees entitled to the protection of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and for a permanent injunction restraining the landlord from executing the decree for ejectment obtained against Saraswatibai. During the trial of the suits the sole issue pressed before the Trial Judge was whether the petitioners were entitled to the benefit of the Act as lawful sub-tenants or as deemed tenants or as protected licensees. The Trial Judge ruled that they were not so protected and he dismissed the suits on March 29, 1978. The petitioners appealed. The only point raised in appeal was whether the petitioners could be described as lawful sub-tenants or protected licensees. Affirming the findings of the Trial Judge the appellants court held that the petitioners were inducted into the premises after 1960 and, therefore, were not entitled to be regarded as lawful sub-tenants. It found that Saraswatibai had become a statutory tenant on the termination of her tenancy by the notice dated July 28, 1962, and the petitioners were her licensees and after the decree for ejectment against Saraswatibai on September 30, 1966 her rights and interest in the premises came to an end and from that date the licensees were not entitled to any statutory protection. Accordingly, the appellate court maintained the dismissal of the suits filed by the petitioners.
4. The petitioners filed writ petitions under Article 227 of the Constitution before the High Court, and the High Court after hearing the parties rejected the petitions by its Order dated July 15, 1981. These petitions for special leave to appeal are directed against that Order.

5. Mr. Soli J. Sorabjee, appearing for the petitioner in S.L.P. No. 5631 of 1981, contends that the petitioner must be regarded as a licensee entitled to the benefit of sub-section (2) of Section 14 read with sub-section (1) of Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. He urges that in virtue of the definition of "licensee" set forth in sub-section (4-A) of Section 5 of the Act, that is to say, a person who is in occupation of the premises under a subsisting agreement for licence, the petitioner must be regarded as a licensee in occupation on February 1, 1973, and therefore a tenant falling within the terms of sub-section (1) of Section 15-A. On that, learned counsel says, the petitioner must be deemed, pursuant to sub-section (2) of Section 14, to be a tenant of the landlord, the first respondent, on the terms and conditions of the agreement. Now, there can be no doubt that if the petitioner can be said to be a licensee in occupation on February 1, 1973 he is entitled to assert that he has become a tenant of the landlord. But a licensee is one who is in occupation under a subsisting agreement for licence. The agreement for licence must be subsisting on the date on which he claims to be a licensee. In the instant case, in order to establish his claims the petitioner must be in occupation on February 1, 1973 under an agreement for licence subsisting on that date.

6. In our opinion, the petitioner is not entitled to the benefit claimed by him. An agreement for licence can subsist and continue to take effect only so long as the licensor continues to enjoy a right, title or interest, in the premises. On the termination of his right, title or interest in the premises, the agreement for licence comes to an end. If the licensor is a tenant, the agreement for licence terminates with the tenancy. No tenant is ordinarily competent to grant a licence terminates with the tenancy. No tenant is ordinarily competent to grant a licence enduring beyond his tenancy. On the termination of the licensor's tenancy the licensee ceases to be a licensee. This loss of status is the point from which sub-section (2) of Section 14 begins to operate and in consequence of its operation, the erstwhile licensee becomes a tenant of the landlord on the terms and conditions of the agreement.

7. What have we here ? Saraswatibai ceased to be a tenant of any description long before February 1, 1973. The contractual tenancy came to an end when the notice to quit dated July 28, 1962 took effect and the statutory tenancy terminated when the decree for ejectment was passed thereafter. Before February 1, 1973 she had ceased to be a tenant. With that, the agreement for licence stood automatically terminated. In consequence, the petitioner cannot legitimately claim to be a licensee on February 1, 1973.

8. Mr. Sorabjee relies on *Madhusudan A. Mahale v. P.M. Gidh* [16 Mah LJ 436], but we are unable to see any support for the petitioner in the judgment, in that case.

9. In our judgment, Special Leave Petition No. 5631 of 1981 must fail.

10. Mr. D.V. Patel, appearing for the petitioner in Special Leave Petition No. 5632 of 1981, points out that the petitioner had been in occupation of the entire flat as a sub-tenant since 1943 and that in 1960 he had merely restricted his occupation to the portion presently occupied by him. It must be taken, he contends, that he was a lawful sub-tenant since 1943, and therefore, by virtue of sub-section (1) of Section 14 of the Act he must be regarded as a tenant of the landlord on the determination of Saraswatibai's tenancy. The contention has no force. The courts below have found that the occupation of the petitioner in the premises presently in his possession must be treated as dating back to 1962 and not earlier. That being so, the benefit of sub-section (1) of Section 14 cannot be available to the petitioner. The benefit can be claimed by a sub-tenant to whom the premises have been lawfully sub-let before the commencement of the Bombay Rents, Hotel and

Lodging House Rates Control (Amendment) Ordinance, 1959. Inasmuch as the sub-tenancy of the petitioner in the premises has been found to commence from 1962, we must hold that this petitioner also has no right to continue in possession. This special leave petition must also be rejected.

11. As regards the remaining special leave petitions, it is admitted that they must be disposed of on the same footing as Special Leave Petition (Civil) No. 5631 of 1981.

12. In the result these special leave petitions are dismissed.

13. Learned counsel for the petitioners pray that the petitioners may be allowed to continue in possession for a period of eighteen months in view of the great difficulty in securing alternative accommodation in Bombay. They point out that the landlord, the first respondent, had agreed in the High Court to grant that period to the petitioners but subject to the condition that the petitioners did not move this Court in appeal. Having regard to the circumstances of the case, it appears to us appropriate to direct that the petitioners shall not be dispossessed from the accommodation in their possession up to September 30, 1982, provided they furnish an undertaking with the Registrar of this Court within one month from today :

(a) that they will hand over peaceful and vacant possession of the said premises to the landlord, the first respondent, on or before September 30, 1982,

(b) that they shall continue to pay to the first respondent by the 7th day of each month an amount on account of the use and occupation of the premises equal to the monthly amount paid by them to the licensor Saraswatibai under the agreement for licence,

(c) that they will deposit within three months from today in the court executing the decree in ejectment suit No. 576/5157 of 1962 all arrears calculated in accordance with the Condition (b) mentioned above for the period commencing with the date of the decree in that suit, and

(d) that they shall not induct in the said premises any other person as sub-lessee, licensee or otherwise.

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