

Rashpal Malhotra

Vs

Mrs. Satya Rajput and Another

Civil Appeal No. 188 of 1981

(Sabyasachi Kukharji, G. L. Oza JJ)

11.09.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This is an appeal by the appellant claiming to be a tenant of the premises in question. There was an order of eviction under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called 'the Rent Act'). The respondent-landlady is the owner of House No. 722, Sector II-B, Chandigarh (hereinafter called the suit premises'). The suit premises was let out by a lease deed by respondent 1 to respondent 2 herein, Haryana Milk Food Corporation for the residence of its General Manager at Chandigarh. It is stated in the said lease deed that the lease was for the use of Shri R. P. Malhotra who was at that time the General Manager of Haryana Milk Food Corporation. On behalf of the lessor the landlady, respondent herein has signed and on behalf of the lessee, it is signed as follows : "for Haryana Milk Food Corporation R. P. Malhotra "who is the appellant herein. The appellant left the services of Haryana Milk Food Corporation in the end of 1974 and thereafter attempted to pay the rent of the suit premises by sending it by a bank draft with a covering letter on the letterhead of Haryana Milk Food Corporation. It is the case of the landlady, respondent 1 that on coming to know of the cessation of the appellant's employment with Haryana Milk Food Corporation respondent 1 stopped accepting rent from the appellant. On November 23, 1977 application for eviction was filed by respondent 1 against the appellant and respondent 2 Haryana Milk Food Corporation, inter alia, on the following grounds : (a) non-payment of rent from January 1, 1975 onwards; (b) sub-letting of entire premises by the Haryana Milk Food Corporation to the appellant and (c) bona fide personal requirement.

2. It is relevant to mention that the rent application was filed by the respondent making Haryana Milk Food Corporation as the first defendant and the appellant as the second defendant under Section 13 of the Rent Act. Respondent 2 Haryana Milk Food Corporation filed a written statement contending that Haryana Milk Food Corporation was just a trade name and not a legal entity, nor it was a partnership firm and the owner of the said concern was Kailash Chemical and Textile Mills Ltd. The same ground was taken by the appellant in the written statement filed by the appellant. Respondent 2 further contended the appellant had been sending cheques and drafts for the payment of rent to the landlady which she had never accepted as none of the drafts sent by the appellant to the landlady had been encased. Respondent 2 further contended that she had never accepted the appellant as the teanant from whom she had never accepted any rent. The landlady also filed an application for impleading the company as a party but unfortunately for unexplained reason the same was not proceeded with and withdrawn.

3. The trial court raising issues, inter alia, held so far as relevant to the present purpose that Haryana

Milk Food Corporation obtained the house for the appellant and the said concern was making payment of rent to respondent 1. The appellant and respondent 2 were liable to be ejected on the ground of arrears of rent. It was further held that the suit premises was required bona fide by respondent 1. In the premises on May 5, 1979 the trial court ordered the ejection of the appellant and respondent 2 from the suit premises. The judgment of the appellate court was passed on November 5, 1979 affirming the findings of the trial court holding that the appellant took the premises on behalf of Haryana Milk Food Corporation. It was further held that Haryana Milk Food Corporation was the tenant under respondent 1. It was further held that the appellant and respondent 2 were held liable to be ejected on account of non-payment of rent and view of the aforesaid findings eviction was ordered from the suit premises. There was a further revision to the High Court and the High Court dismissed the appellant's revision petition affirming the reasoning of the courts below.

4. The main point of challenge in this Court was that Haryana Milk Food Corporation was not a legal entity and a suit against such a body was not maintainable. It was further contended that there could not have been any lease with a non-legal entity. The main ground of attack in this appeal was that the real tenancy was with the appellant and not respondent 1. It may be mentioned that an appeal was filed before the appellate authority by Haryana Milk Food Corporation through its General Manager, and Kailash Chemical and Textile Mills Ltd., through its Director. It was contended in the grounds of said appeal, that the relationship of the landlord and tenant between respondent 1 and the appellant did not stand proved from the material on record. It was further contended that the note signed by the appellant that the order dated May 5, 1979 had virtually held Kailash Chemical and Textile Mills Ltd., as liable. It had treated Haryana Milk Food Corporation as synonymous with Kailash Chemical and Textile Mills Ltd., and it was, therefore, aggrieved by the said order. That appeal had been filed by Haryana Milk Food Corporation through its General Manager and Kailash Chemical and Textile Mills Ltd., through its Director. Therefore, Kailash Chemical and Textile Mills Ltd., accepted that this was the company which owned Haryana Milk Food Corporation and it was a legal entity.

5. In support of this contention that a non-legal entity like the Haryana Milk Food Corporation could not enter into a reference with the landlady, reliance was placed on the statement of Halsbury's Laws of England, Fourth Edition volume 7 at page 457, paragraphs 765, 766 and 767, where it was stated that as regards litigation by an incorporated company, as a rule the directors were the persons who have the authority to act for the company. Relying on the said statement of law the Calcutta High Court in the case of Modi Vanaspati Manufacturing Co. v. Katihar Jute Mills (Pvt.) Ltd. (AIR 1969 Cal 496, 511) in paragraph 42, A. N. Roy, J. as the learned Chief Justice of India then was, observed that the provisions contained in order 30, Rule 10 of the Code were that any person carrying on business in the name and style other than his own name may be sued in such name or style as if it were a firm name and so far as the nature of the case would permit all rules under Order 30 of the Code of Civil Procedure would be applicable. Agreeing with the said observations, the other learned Judge, S. K. Mukherjee, J. at paragraph 63 referred to the Halsbury's Laws of England, Third Edition, Volume 6 at page 444, where it was said that a company can only sue or be sued in its corporate name. Mr. Garg, learned counsel for the appellant strongly relying on these observations submitted that the suit against Haryana Milk Food Corporation was not maintainable. A contrary view was taken by the Full Bench of the Allahabad High Court in Rajendra Prasad Oil Mills, Kanpur v. Smt. Chunni Devi (AIR 1969 All 1 : 1968 All LJ 558 : 39 Com Cas 193 : ILR (1968) 2 All 56), where it was held that a limited company falls within the meaning of the expression 'person' as used in Rule 10, Order 30 of the Code of Civil Procedure. This would be so even though the limited company might have been carrying on business in a name

or style other than its own without any attempt to conceal its own corporate name and this fact was known to the party suing. There, the court observed that there could not be any controversy that Rajendra Prasad Oil Mills, Kanpur was an undertaking owned by N. K. Industries Limited. Satish Chandra, J. as the learned Chief justice then was, observed that in certain circumstances a limited company carrying on business in an assumed name by concealment of its own corporate name is a person within meaning of Order 30 Rule 10 of the Code of Civil Procedure. Same in the view of the Rajasthan High Court in the case of M/s. M. K. M. Moosa Bhai Amin, Kota v. Rajasthan Textile Mills, Bhawanimandi (AIR 1974 Raj 194 : 1974 Raj LW 77), where it was held that where a limited company carried on a business in an assumed name and a suit came to be filed against the defendant in that name in respect of price due on sale of goods in view of Section 3(42) of the General Clauses Act, 1897 the expression 'person' as used in the Code of Civil Procedure Order 30 Rule 10 in the suit filed against the defendant in the name assumed by the limited company was tenable under Order 30 Rule 10 of the Code of Civil Procedure. The Kerala High Court, however, in the case of Educational Supplies Depot, Trivandrum v. Vithoba High School (1970 Ker LJR 43) held that a decree could not be passed against a school as it was not a juristic entity much less a person to hold property. It may be mentioned that subsequently the Kailash Chemical and Textile Mills Ltd. has changed its name to the Haryana Milk Food Corporation and they have merged formally (sic formally), but that is subsequent to the lease and the institution of the suit. It is manifest from the position that parties knew that Kailash Chemical and Textile Mills Ltd. was the owner of the Haryana Milk Food Corporation. Kailash Chemical and Textile Mills Ltd. accepted that position as it would be apparent from the grounds filed before the appellate authority. Mr. Garg, learned counsel for the appellant, however, tried to emphasise that in view of the definition of tenant under Section 2(i) of the Rent Act the right of eviction under Section 13 in the suit as framed was not maintainable.

6. It has been held by all the courts that the parties knew who were the tenants, it is apparent that the appellant was not the tenant. It was held by the Rent Controller that one of the grounds for eviction was bona fide need of the landlord. The appellate authority and the High Court did not go into this question. The parties were aware that Kailash Chemical and Textile Mills Ltd., was the real owner of the Haryana Milk Food Corporation. Neither Haryana Milk Food Corporation nor Kailash Chemical and Textile Mills was prejudiced by holding that the lessee was not the appellant and they have not been prejudiced by not being made formal parties. In the aforesaid view of the matter, we are inclined not to interfere with the order of eviction.

7. It has to be borne in mind that this is an appeal under Article 136 of the Constitution. This Court in Heavy Engineering Corporation Ltd., Ranchi v. K. Singh and Co., Ranchi (AIR 1977 SC 2031 : (1977) 2 SCC 515) expressed the opinion that although the powers of this Court were wide under Article 136 it could not be urged that because leave had been granted the court must always in every case deal with the merits even though it was satisfied at the ends of justice did not justify its interference in a given case. It is not as if, in an appeal with leave under Article 136, this Court was bound to decide the question if on facts at the later hearing the court felt that the ends of justice did not make it necessary to decide the point. Similarly in Baigana v. Deputy Collector of Consolidation this Court expressed the view that this Court was more than a court of appeal. It exercises power only when there is supreme need. It is not the fifth court of appeal but the final court of the nation. Therefore, even if legal flaws might be electronically detected, we cannot interfere save manifest injustice or substantial question of public importance. In this case it is apparent from the facts placed before us and the High Court and the courts below that there is genuine need of the landlady for the premises in question. It has been established clearly that the tenancy agreement was not with the appellant and the lease was signed by the appellant on behalf of other entity though not strictly

legal but it was entered by a legal entity, namely, Kailash Chemical and Textile Mills Ltd. It has been held that no deposit had been made in accordance with law by three courts. Merely because in the form of the lease Kailash Chemical and Textile Mills Ltd., was not mentioned and as such was not made a party to the suit and the lease was purported to be entered with an entity which is not a juristic person and a suit was filed against such non-juristic person, this Court should not interfere with the conclusions arrived at by the learned appellate authority and the High Court. It has to be borne in mind that this Court in exercising its power under Article 136 of the Constitution acts not only as a court of law but also as a court of equity and must subserve ultimately the cause of justice. In this case, there is evidence that there is some bona fide need of the landlady for her family. After a long lapse of time, in the facts and the circumstances of this case we decline to interfere with the findings arrived at by the High Court and the courts below.

8. We, therefore, dismiss this appeal, but we direct that in case the landlady, respondent 1 herein lets out the premises within a period of five years the first option should be given to the appellant. We further direct and record the undertaking of the landlady that she would not sell the premises within a period of five years, and in case she does the first option should be given to the appellant to purchase the property. We further direct that the decree for eviction will not be executed up to August 31, 1988 provided the appellant files an undertaking in this Court in the usual form within four weeks from this date. We also direct that the occupation charges or mesne profits from August 1, 1987 should be paid to respondent 1 at the rate of Rs. 800 per month and the first of such payment should be made on September 30, 1987 and each subsequent payment should be made on 15th of each subsequent month. In default of filing the undertaking or not making the payment as hereinbefore indicated the order of eviction will become executable forthwith.

9. The appeal, therefore, fails and it is dismissed subject to the conditions indicated hereinbefore. In the facts and circumstances of this case, the parties are directed to pay and bear their own costs.

</html