

Damodar Das Jain

Vs

Krishna Charan Chakraborti and Another

Criminal Appeal Nos. 313 and 314 of 1985

(B. C. Ray, M. H. Kania JJ)

17.11.1988

JUDGMENT

1. This appeal by special leave is directed against the the judgment of the Court was delivered judgment and order passed on August 22, 1984, dismissing the criminal writ petition and criminal application by the High Court. The appellant-company filed a complaint under section 630 of the Companies Act, 1956 before the Magistrate's Court on the ground that respondent No. 1 was provided with a company's flat at Colaba, Bombay, for residing there while he was in employment of the company. It is the Company's case that they took the and flat as a licensee from the owner on the basis of a paying guest agreement and permitted respondent No. 1 to stay therein. Respondent 1, after termination of his service in 1979 refused to vacate the flat and hence the company filed the complaint under Section 630 of the Companies Act for eviction of respondent No. 1 from the said flat and for taking possession of the flat and for punishing respondent No. 1.

2. The Magistrate, after hearing the parties, passed an order for eviction of respondent No. 1 from the said flat and also convicted respondent No. 1.

3. Against this judgment, an appeal was filed before the Session Judge. The Sessions Judge allowed the appeal and reversed the judgment and order of the Magistrate. Against that an appeal was filed before the High Court. The High Court dismissed the appeal taking the view that the basic questions involved were whether the Company could be said to be a tenant of the said flat as contemplated under the Bombay Rents, Hotels and Lodging House Rates (Control) Act, 1947, and whether, after the written agreement of licence in favour of the company has expired, it could be said that the Company was a licensee of the said flat. The court took the view that both these questions were complicated questions of civil law and hence the Magistrate's Court has no jurisdiction to decide the same. The High Court felt that the disputes raised by the respondent herein were bona fide disputes. Before us, it has not been disputed that this view of the High Court was correct as far as the question whether the Company could be held to be a tenant of the flat is concerned. As far as the question implied licence in favour of the Company is concerned, that also, in our view, is a question which require to be determined by civil court and cannot be determined by a Magistrate's Court in a proceeding under Section 630 of the Companies Act. We do not find any merit in the appeal. The appeal is therefore, dismissed. Both the aforesaid questions are left open to be decided by a court of competent jurisdiction. We may, however, point out that if there are any observations in the judgment of the High Court to the effect that, after a written agreement of licence comes to an end, there cannot be an implied licence, they may not be taken as laying down the correct law.

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