

Roop Chand

Vs

Gopi Chand Thelia

Civil Appeal No. 855 of 1978 and C.M.P. No. 906 of 1979

(CJI R. S. Pathak, S. Natarajan JJ)

29.03.1989

JUDGMENT

NATARAJAN, J. –

1. This appeal by special leave is by a tenant and is directed against the judgment of the High Court of Rajasthan in Civil Second Appeal No. 59 of 1987 confirming the judgments of the appellate court whereby the appellant was held liable to be evicted from the premises leased to him by the respondent on the ground of having parted with the possession of the premises.

2. C.M.P. No. 906 of 1979 has been filed by the respondent under Order XLI Rule 27, CPC for certain documents being received as additional evidence.

3. Insofar as the facts are concerned, there is no controversy whatever. In January 1963, the appellant took on lease from the respondent a building situate in Rasta Ka Gheewalan in the city of Jaipur. In the Deed of Rent executed by the appellant, there was an express provision that he should not sublet the premises to anyone. However, in March 1968, a social club known as the Lokpriya Social Club came to be opened in the premises and the members of the club began using the premises for playing cards, chopar, chess etc. every evening till about midnight or even till 1 a.m. The functioning of the club in the premises led to the respondent filing a suit against the appellant seeking his eviction on two grounds viz. (1) sub-letting the premises contrary to the terms of the lease deed and (2) conversion of the user of the premises from residential to non-residential purpose. As it has been concurrently held by the first two courts that the premises had not been leased for residential purpose, no further advertance is called for to the second ground on which the eviction was sought for.

4. As regards the first ground, the appellant did not dispute but on the other hand admitted the factum of the Lokpriya Social Club being opened in the leased premises in March 1968 and the club functioning in the premises since then. He however, contended that he had neither sublet for rent nor otherwise parted with the possession of the premises to the club. His case was that he continued to have possession of the premises for doing business in gold jewellery and cloth on commission basis in a small portion of the building but being the founder of the club, he had provided the club a room to have its office and a hall for the club members to assemble and play games such as cards, chess chopar etc.

5. In the trial of the suit, the respondent examined himself and as Assistant in the office of the Registrar of companies as witnesses on his side. The appellant examined himself and there other witnesses on his side to substantiate his contentions.

6. The trial court held that the respondent had failed to prove that the appellant had sublet the premises to the Lokpriya Social club for rent and that the evidence only warranted an inference that the appellant had allowed the club to use the premises as a licensee and as such, the appellant was not liable to be evicted. The appellate court, while concurring with the trial court that the evidence did not establish any sub-letting of the premise in favour for rent, nevertheless held that there were adequate materials to hold that the appellant had parted with the possession of the premises in favour of the club and such parting of possession would amount to sub-letting within the meaning of the Act and as such the appellant was liable to be evicted. Consequently, the appellate court passed a decree for eviction against the appellant. The second appeal to the High Court by the appellant did not meet with success and hence he has approached this court by way of appeal by special leave.

7. Since the first ground on which eviction was sought for was the sub-letting of the premises to the Lokpriya Social Club, the question whether the appellant was receiving any rent or not from the club had loomed large in the proceedings before the trial court and the appellate court. The appellant's categorical stand that he was not receiving any rent from the club and his permitting the club to use by the respondent by specific materials. However, after the appellant had filed this appeal, the respondent has been able to obtain copies of the Managing Committee's reports, balance sheets and auditor's reports of the club for the year 1968 to 1976. It is relevant to mention here that the club has been registered as a limited company under the Indian Companies Act, 1956. As a registered company, it had to prepare audited balance sheets every year and present the same together with the auditor's report to the members of the club and have the same approved. The respondent seek permission of the court to have the Managing Committee's report, the auditor's reports and the balance sheets filed as additional evidence in the appeal and for that purpose he has filed CMP No. 906 of 1979 under Order XLI Rule 27 CPC. The learned counsel for the appellant vehemently opposed the filing of additional documents by the respondent as additional evidence on the ground these documents ought to have been filed before the trial court or the appellate court and hence they cannot be filed now. It was also contended that if additional documents are received in evidence at this stage, the appellant will have no opportunity to adduce contra-evidence. We will take up the question whether CMP No. 906 of 1979 should be allowed or not for consideration later. We will first examine whether even without these documents the order of eviction passed by the appellate court and confirmed by the High Court can be sustained or not.

8. It may be recalled that the decree for eviction against the appellant has been passed on the ground that though sub-letting of the premises for rent has not been proved, yet the appellant must be held to have parted with possession of portion of the premises to the club and such parting with possession would attract Section 13(1)(e) of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act'). On a reading of clause (e) of Section 13(1) it is seen that a tenant will render himself liable for eviction if he has "assigned, sublet or otherwise parted with the possession of, the whole or any part of the premises without the permission of landlord". Consequently even if a tenant parts with possession of the whole or any part of the premises without assigning or sub-letting the premises, he would still be liable to be evicted from the premises under the Act. If from this perspective, the user of the premises by the club is examined, it can certainly be held that the appellant had parted with the possession of the premises as envisaged in clause (e) of sub-section (1) of Section 13. This conclusion is warranted by several factors. Admittedly, when the club began to function in the leased premises, a name board carrying the name of the club to be exhibited in the premises. It is also admitted that the members of the club assemble at the premises everyday and play cards and other indoor games from evening till about midnight. Though the appellant would say that the club members cannot have access to the premises unless he or in his absence his brother or son opens the premises, there is no evidence to show that the appellant had at any time exercised

his right to exclusive possession and kept the premises locked and denied the members of the club entry to the premises. That apart there is significant fact which has escaped the noticed of appellate court and the High Court viz. that the club has its registered office at the leased premises. Section 146 of the Indian Companies Act enjoins every company to have a registered office to which all communication and notice may be addressed. Once a company has a registered office it is bound to comply with several provisions of the Companies Act, viz. (a) the register of members is to be kept there (Section 163); (b) the right of inspection has to take place there (Section 163); (c) the register of directors, etc., is also to be kept there (Section 303); (d) the account books are to be maintained there unless the directors decide otherwise (Section 20); (e) the register of mortgages and charges and copies of registered documents are also to be kept there (Section 143); and the right of inspection of them is to be exercised there (144); (f) service of documents should be effected there. These requirements of the Act have to be complied with by the club virtue of its registered office being situated in the leased premises. The appellant cannot prevent the club from performing its statutory duties so long as the club has its registered office in the premises. Hence this factor also warrants the view that the appellant had parted with possession of the major portion of the premises to the club. In such circumstances we see no merit in contention of the appellant that the user of portion of the premises by the club is only of permissive nature and that there was no parting with possession of the premises to the club. The appellate court and the High Court were therefore, right in holding that the user of the premises by the club would amount to the appellant having parted with possession of a portion of the premises as contemplated under Section 13(1)(e) of the Act.

9. Learned counsel for the appellant referred us to *Rajbir Kaur v. S. Chokesiri & Co* ((1989) 1 SCC 19). and argued that even if the appellant had conferred rights exclusive possession to the club over a portion of the leased premises, the club would not be a sub-lessee but only a licensee of the appellant. We are unable to accept this arguments because of various factors. In the first place, in *Rajbir Kaur* ((1989) 1 SCC 19) it was clearly found that in the documents which had been brought about between the parties, the occupants were inducted into possession only as licensees and not, as lessees. Secondly, in the case arose under the East Punjab Rent Restriction Act in which Section 13 refers only to a tenant transferring his right under the lease or sub-letting the entire building or any portion thereof whereas in Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act with which we are concerned, there is reference to a tenant assigning, sub-letting or otherwise parting with the possession of the whole or any part of the premises without the permission of the landlord. In such circumstances the judgment in *Rajbir Kaur* ((1989) 1 SCC 19) cannot be of any avail to the appellant.

10. Coming now to CMP No. 906 of 1979 filed by the respondent for receiving certain documents as additional evidence, we have already stated that these documents consist of the reports of the managing Committee, the balance sheets and the auditor's reports for the years 1968 to 1976. Though there are as many as 25 documents filed along with the application they really constitute 8 sets of documents pertaining to the period of 1968 to 1976 except for the year 1969. The purpose of filing these documents is to show that in each of the years in question it has been stated in the auditor's report that the rent of the club premises has not been determined and provided for as the matter is under litigation. Mr. Sanghi, learned counsel for the respondent submitted that the explanation given in the auditor's reports for provision not having been made in the balance sheet for payments of rent by the club was not because the club had been allowed free user of the premises without payment of rent but because there was litigation regarding the user of the premises by the club. The further argument was that the auditor's report clearly showed that the club was bound to pay rent to the appellant for the user of the premises but such payment was being deferred in view of the pendency of the eviction suit between the respondent and the appellant. Mr. Sanghi

stated that there cannot be any objection to the additional documents being received in evidence because they were reports and balance sheets submitted by the club, of which the appellant is a member, to the Registrar of Companies and hence there is no question of the appellant being taken by surprise by the contents of the documents. On the other hand, the learned counsel for the appellant vehemently contended that the respondent is not entitled under law to file documents by way of additional evidence at this belated stage of matters because the documents were in existence even when the parties went to trial before the trial court and as such the respondent should have acted diligently and either summoned for the documents from the office of the Registrar of Companies or obtained copies of them and filed them in court during the trial or at least when the matter was before the first appellate court.

11. On a consideration of the matter we think the objections raised by the appellant's counsel for the filing of additional evidence by the respondent in the appeal proceedings before us merits acceptance. It is true that the documents sought to be filed by way of additional evidence are indisputably the audited balance sheets and reports submitted by the club but even so the fact remains that all the documents could have been obtained and filed by the respondent before the trial court itself since the judgment had been rendered by the trial court only on February 22, 1977. Even if the respondent was not able to file the documents before the trial court, he could have filed the documents before the appellate court and sought its permission to file them as additional evidence. Even before the High Court there was no attempt in this behalf. No satisfactory explanation has been offered by the respondent for having failed to produce the documents before the courts below or the High Court. In such circumstances, we see no justification to allow CMP No. 906 of 1979 and permit the respondent to file the documents in question as additional evidence in the proceedings. Accordingly CMP No. 906 of 1979 is dismissed.

12. In spite of the dismissal of CMP No. 906 of 1979, since we have sustained the view taken by the first appellate court and the High Court that the appellant had parted with possession of a major portion of the leased premises in favour of the Lokpriya Social Club and such parting with possession would attract the operation of Section 113(1)(e) of the Act, we find no merit in the appeal and accordingly it will stand dismissed. The appellant is however, given three months time from today to vacate and deliver vacant possession of the premises to the respondent subject to his filing an undertaking in the usual terms within a period of four weeks from today. There will be no order as to costs.

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