

Chandmal

Vs

Firm Ram Chandra and Vishwanath

Civil Appeal No. 2279 of 1991 (arising out of S. L. P.(C) No. 1097 of 1990)

(B. C. Ray, J. S. Verma JJ)

07.05.1991

JUDGEMENT

RAY, J.:-

1. We have heard learned counsel for the parties and we grant special leave.
2. This appeal on special leave is directed against the judgment and order passed in Civil Revision Application No. 500 of 1985 by the High Court of Judicature at Bombay, Aurangabad Bench allowing the Revision, setting aside the judgment and decree passed by the district Judge in Rent Appeal No. 5 of 1984 confirming and allowing the judgment and order of the Additional Rent Controller, Aurangabad in R. C. No. ARC/ 71/ 3.
3. The matrix of the case is as follows:-

The appellant-landlord, Chandmal, s/o Sumermal Surana as plaintiff filed a suit for eviction of the respondent-defendant Firm Ram Chandra & Vishwanath, a commission agent firm from his shop bearing Municipal No. 4-16-101 situated at Mondha, Taluka, District Aurangabad (Maharashtra) under S. 15(3)(a)(iii) of the Hyderabad House (Rent, Eviction and Lease) Control Act, 1954 to be hereinafter to be referred to as the said Act on the ground inter alia that the respondent was the tenant of the said shop attached to the said house of the appellant-landlord on the monthly rent of Rs. 50/- per month and the tenancy commences from the 1st day of every month according to the English calendar, that the landlord-appellant required the suit shop for his own personal use as he intended to start commission agency and other business in the said shop, that he terminated the tenancy of the respondent by serving the two notices dated 28-3-1969 and 8-12-1970 and that the respondent did not vacate the suit premises, hence the suit has been filed for eviction of the tenant-respondent from the said premises. Shankarrao Marutirao Sonawane, one of the partners of respondent firm filed his written statement 1 before the Additional Rent Controller accepting the ownership of the appellant and tenancy of the respondent at the rate of Rs. 50 /-per month. He, however, denied the appellant's allegation that he required the suit premises for his personal use. According to the respondent, the appellant is a member of Hindu joint family comprising of his father, Sumermal, his real brothers and appellant and as one of the partners of registered firm runs a kirana of commission agency shop under the name and style of M/s. Rajmal Sumermal Surana. It has been further submitted that the appellant owns many houses and shops at Aurangabad and also runs a very big shop at Bhaji Bazar, Aurangabad and is not entitled to evict. In the additional written statement it has been further stated that the appellant purchased the house from Balkrishna and brothers, the firm Ramchandra and Vishwanath is a partnership firm registered under the Partnership Act, one of the Partners of the firm Ramchandra and Vishwanath is occupying the

house as a permanent tenant since Samvat 2002. It was also been contended that the partners of the firm are not made parties to the eviction proceedings and hence the suit was not tenable.

4. An additional issue was framed at the request of the appellant which was to the following effect:--

"Do defendant prove that he is permanent tenant and his claim is bona fide."

5. The trial Court considering the evidences adduced on behalf of the defendant respondent held that the defendant failed to prove the claim of permanent tenancy of Ramchandra Madhavrao since Samvat 2002 over the suit premises and that the claim of permanent tenancy is not bona fide. This issue was thus answered in the negative.

6. The Additional Rent Controller, therefore, held that the appellant is entitled to evict the respondent from the suit premises in view of the provisions of S. 15(2)(vi) of the said Act and, therefore, made an order directing the tenant-respondent to hand over vacant and peaceful possession of the said shop to the landlord-appellant within a period of 30 days of the order though he negated the plea of bona fide requirement of suit premises for his own -occupation.

7. This order was made on February 14 1984. Against this judgment and order, the tenant-respondent filed an appeal being Rent Appeal No. 5 of 1984 under S. 25 of the said Act in the Court of District Judge at Aurangabad. The learned District Judge confirmed the judgment and order of the Additional Rent Controller holding that the landlord failed to prove that he bona fide required the premises for personal use, for starting new business. It was further held that so far as the claim of permanent tenancy, there was no iota of evidence to support the tenant-respondent's claim of permanent tenancy. It also held that the tenant-respondent has put forth the claim of permanent tenancy to defeat the landlord-appellant's right to claim possession of the premises and had there been any substance in the claim, the tenant-respondent would have produced evidence in support of it. Complete absence of evidence indicated that the claim is fake and not put forth bona fide. The learned District Judge, therefore, held that the tenant's claim of permanent tenancy was not bona fide and so upheld the finding of the Additional Rent Controller and granted three month's time to the tenant-respondent to deliver possession of the suit premises to the landlord-appellant.

8. The tenant-respondent feeling aggrieved filed an application for Revision under S. 26 of the said Act, in the High Court at Bombay (Aurangabad Bench) being Civil Revision Application No. 500 of 1985. The said Revision Application was allowed by the learned single Judge setting aside the concurrent finding of the courts below holding inter alia that in the reply of the tenant to the notices sent by the landlord, there was no semblance of a claim for permanent tenancy. It was further held that in the written submission there was no whisper about the claim of permanent tenancy. It is for the first time that in the additional written statement filed on behalf of the tenant the claim of permanent tenancy by one of the partners, Ramchandra Madhavrao since Samvat 2002 was made. It has also been held that during the trial, Shankarrao Marutirao Sonawane, one of the partner of the respondent firm who has signed the written statement has not uttered a word in his examination-in-chief with regard to the question of permanent tenancy. It was, therefore, held that in these circumstances "it is the duty of the Court in the interest of justice to interfere even with a concurrent finding of fact because on the record, I find that there is not a single factor to come to the conclusion that the claim was mala fide or was not bona fide as is required by the statute."

9. The learned single Judge, therefore, set aside the judgments of the courts below and allowed the Revision Application with costs throughout.

10. It is against this judgment and order, the instant appeal on special leave has been filed by the landlord. It is convenient to set out hereinbelow the relevant provisions of S. 15(2)(vi) of the said Act before proceeding to consider whether the High Court was justified in setting aside the judgment and order of the courts below:-

Section 15(2)(vi):

A tenant shall not be evicted, whether in execution of a decree or otherwise except in accordance with the provisions of this section-

(vi) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the house, and if the Controller is not so satisfied he shall make an order, rejecting the application."

11. It is also pertinent to set out in this connection the provisions of S. 26 of the said Act:

Section 26:

"Notwithstanding anything contained in this Act or any other law for the time being in force, an application for revision shall lie to the High Court from any final order passed on appeal by an appellate authority on the following grounds:-

(a) that the original or appellate authority exercised a jurisdiction not vested in it by law, or

(b) that the original or appellate authority failed to exercise a jurisdiction so vested, or

(c) in following the procedure or passing the order, the original or appellate authority acted illegally or with material irregularity."

12. There is no dispute regarding the submission made in Para 9 of the additional written statement which is a part of the same written statement filed on behalf of the respondent by one of its partners, Shankarrao Marutirao Sonawane to the effect that one of the partners of the said firm, Ramchandra Madhavrao is occupying the house as a permanent tenant since Samvat 2002. Admittedly, on the basis of this additional Written Statement an additional issue No. 1 was framed at the request of the landlord appellant whether the claim of permanent tenancy of Ramchandra Madhavrao was bona fide. It is evident from the provisions of S. 15(2)(vi) as set out hereinbefore that if the tenant has claimed a right of permanent tenancy and that such claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the house. The Additional Rent Controller as well as the District Judge considered carefully and minutely the evidence adduced on behalf of the tenant-respondent and found that claim of permanent tenancy was not bona fide. Accordingly, the courts below held that the tenant-respondent was liable to be evicted from the suit premises on this ground alone and passed order for eviction from the suit premises. The jurisdiction of the High Court in revision against the order passed on appeal by the District Judge is a limited one and it is almost pari materia with the provisions of S. 115 of the Code of Civil Procedure. The High Court while exercising the revisional jurisdiction can interfere with the order passed on appeal by the appellate authority only on three grounds i.e. (i) where the original or appellate authority exercised a jurisdiction not vested in it by law, or (ii) where the original or

appellate authority failed to exercise a jurisdiction so vested, or (iii) where in following the procedure or passing the order, the original or appellate authority acted illegally or with material irregularity. It is evident from the averments made in para 9 of the additional written statement. that one of the partners of the respondent firm, Ramchandra Madhavrao occupied the said premises as a permanent tenant since Samvat 2002. This claim of permanent tenancy was held to be not bona fide by the original Court as well as by the appellate authority on a consideration and appraisal of the evidence adduced on behalf of the tenant-respondent and as such both the courts below passed order of eviction of the tenant-respondent from the suit premises. These are admittedly concurrent findings of fact arrived at by the original and the appellate authority. Moreover, these findings in any view of the matter whatsoever, cannot be held to be either without jurisdiction nor it can amount to a failure to exercise jurisdiction vested with them, nor it can be held to be made by the original or appellate authority illegally or with material irregularity.

13. The revisional jurisdiction of the High Court under S. 26 of the said Act is confined strictly to the jurisdictional error or illegal exercise of jurisdiction. The finding of the High Court to the effect that it was the duty of the Court in the interest of justice to interfere even with the concurrent finding of facts because on the record, High Court found that there was not a single factor to come to the conclusion that the claim was mala fide or was not bona fide as required by the statute, is entirely baseless and not in accordance with the provisions of S. 26 of the said Act which confers revisional jurisdiction on the High Court. It is pertinent to mention in this connection the decision in *J. Pandu v. R. Narsubai*, (1987) 1 SCC 573: (AIR 1987 SC 857). It is a case under the A.P. Buildings (Lease, Rent and Eviction) Act, 1960. Sub- sec. (2)(vi) of S. 10 of A.P. Buildings (Lease, Rent and Eviction) Act which is similar to S. 15(2)(vi) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 sets out two grounds of eviction viz. (1) denial of title of the landlord without bona fides, and(2) claim of permanent tenancy rights without bona fides. It was held that "consequently, either denial of title or claim of permanent tenancy without bona fides will itself be enough to attract S. 10(2)(vi). The. order of eviction on this ground, has, therefore, to be sustained. By reason of this conclusion alone the appeal can be dismissed."

14. In the case of *Majati Subbarao v. P. K. Krishna Rao (deceased) by Lrs.*, (1989) 4 SCC 732: (AIR 1989 SC 2187), it has been observed that the denial of title of the landlord by the tenant must be made in clear and in unequivocal terms. It was further observed that it is well settled that the Court hearing a suit or appeal can take into account events which are subsequent to the filing of the suit in order to give appropriate relief or mould the relief appropriately.

15. As we have stated hereinbefore that the claim of permanent tenancy by one of the partners, Ramchandra Madhavrao has been clearly and unequivocally made in the additional written statement filed on behalf of the respondent. In such circumstances, the provisions, of S. 15(2)(vi) of the said Act are applicable and an order of eviction can very well be passed on this ground alone.

16. In the premises aforesaid, the judgment and order passed in revision by the High Court is contrary to law as the High Court in exercise of its revisional jurisdiction interfered with the concurrent finding of fact arrived at by the original Court as well as the appellate authority. The High Court should not have reversed the same in exercise of its revisional Jurisdiction under S. 26 of the said Act. We, therefore, set aside the judgment and order of the High Court and uphold the orders of the courts below. The respondent is given three months' time to vacate the suit premises on filing the usual undertaking that they will not induct anybody or transfer the same to any other person and they will go on paying the rent of the premises at the usual rate and will deliver vacant and peaceful possession of the suit premises on or before the expiry of the said period to the

landlord appellant. In the facts and circumstances of the case, the parties will bear their own costs.

Appeal allowed.

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