

Bhanwar Lal

Vs

T. K. A. Abdul Karim through N. K. Mohd. Mustafa

Civil Appeal No. 2277 of 1984

(T. K. Thommen, S. P. Bharucha JJ)

19.08.1992

JUDGMENT

1. The appeal is directed against the judgment and order of the Madras High Court directing the appellant/ tenant to hand over vacant possession of the business premises in appeal to the respondent/landlord under the provisions of Section 10(3) (a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Thereunder a landlord may apply to the Rent Controller for an order directing the tenant to put him in possession of a non-residential building (which is not used for the purpose of keeping a vehicle or adapted for such use) owned by him if he is not occupying, for the purposes of a business which he is carrying on a non-residential building in the city, town or village concerned which is his own.

2. The business in respect of which the premises in appeal were sought was carried on by a partnership between the landlord, who was described in the partnership deed as the financing partner, and one other, who was described as the managing partner. The business was of wholesale and retail dealing in paper, board and stationery. The landlord led the evidence of one N. K. Mohammed Mustafa, who held his Power of Attorney in respect of the premises in appeal. It was contended on behalf of the appellant that this witness had no connection whatsoever with the partnership business and could not depose to its requirement. It was also contended that the pleadings and the evidence showed that what was now intended to be carried on in the premises in appeal was the business of cutting, printing and binding and this was a new business and not the existing business of the partnership. We have been taken through the evidence. We find that the witness Mustafa has deposed to the need of the partnership business and has produced documents to show that it was carrying on the business of cutting, printing and binding, through job work. The extent of Mustafa's knowledge of the partnership business has not been challenged in, cross-examination. It is, therefore, difficult to accept the submission that the landlord has adduced no evidence at all in respect of his requirement. Having regard to the nature of the business as shown by the partnership deed and, indeed, the evidence of Mustafa, it is also difficult to accept the submission that the premises in appeal are required for a business which is entirely new. The partnership, was dealing in paper and paper products including stationery. It was doing the business of cutting, printing, and binding through job workers. Such business would certainly be allied to the business of paper and paper products.

3. It was submitted that, having regard to the phraseology of Section 10(3)(a)(iii), it was understood when the lower authorities and the High Court delivered their judgments that the requirement of the landlord was not relevant and that all that was required to be ascertained was that the desire of the

landlord for possession of the premises was bona fide, this understanding of the law had altered having regard to the judgment of this Court in *S. Peer Mohammed v. B. Mohan Lal Sowcar*, (1988) 2 SCC 513: (AIR 1988 SC 1060); and that, therefore, the landlord had not adduced evidence about his requirement of the premises in appeal and the lower authorities and the High Court had not applied their minds to this aspect. We have perused the judgments of the lower authorities and the High Court and we find that there is such evidence on record and that there has been an application of mind to the aspect of the landlord's requirement. The High Court, has, in fact, sustained the order of the lower authorities on the ground, in terms, of "bona fide requirement."

4. Our attention was drawn by Mr. Tarkunde, learned counsel for the tenant, to the partnership deed which, as aforesaid, refers to the landlord as the financing partner and the other partner as the managing partner. The partnership deed also states that the other partner would be in management of the affairs of the partnership and would devote his whole time and attention to its management and day-to-day affairs and operate its banking account. Mr. Tarkunde drew our attention to the materials on record that show that the landlord had been in Malaysia for a long period of time and to an affidavit filed before this Court by the tenant which stated that the landlord was still there. Mr. Tarkunde submitted that all this showed that the landlord was only a sleeping partner and not in conduct of the partnership business, so that he was not entitled to recover possession of the premises in appeal for the purposes of the partnership business. Our attention was drawn to the judgments of this Court in *D. N. Sanghvi and Sons v. Ambalal Tribhuwan Das*, (1974) 3 SCR 55 : (AIR 1974 SC 1026) and *Krishnan Nair v. Ghouse Basha*, (1987) 4 SCC 404: (AIR 1987 SC 2199), where it was held that a sleeping partner is not entitled to recover possession of premises which he, owns for the purposes of the partnership business. Mr. Tarkunde fairly stated that this argument had not been canvassed at any stage hitherto and was not even reflected in the Special Leave Petition but, he submitted, the factual foundation for it being already on record, he was entitled to raise an argument on a point of law.

5. Even if we assume for the purposes of this judgment that an argument on a point of law can be canvassed for the first time in this Court provided the factual foundation for it exists on the record, we cannot entertain this argument on a point of law for the factual foundation for it does not exist on the record. The partnership deed, while it calls the landlord the financing partner and the other partner the managing partner and invests the management in the hands of the managing partner, also contains a clause which states, such partner shall attend diligently to the business of the partnership and carry on the same for the greatest advantage of the partners". Having regard to this clause, we find it difficult to hold that it is established that the landlord is a mere sleeping partner. The foundation for the argument that has not been advanced ought to have been laid in the written-statement of the tenant so that evidence could have been laid upon the basis of which the courts could have determined whether or not the landlord was a sleeping partner.

6. In the result, we do not find any merit in the appeal and dismiss it. The appellant shall pay to the respondent the costs of the appeal. Appeal dismissed.

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