

Motiram Dayaram (Dead) By Lrs. and Another

Vs

Chimanlal Atmaram (Dead) By Lrs. and Others

Civil Appeal No. 5073 of 1996

(Kuldip Singh, K. T. Thomas JJ)

01.08.1996

ORDER

1. This is a landlord's appeal. The appellant sought eviction of the respondent-tenant, inter alia, on the ground that he committed breach of the terms of tenancy so much so that the ground floor of the premises let out for residential purposes, was being used for running power looms, weaving machines, etc. The trial court decreed the suit. The appellate court upheld the findings of the trial court. The High Court in its revisional jurisdiction upset the findings of the two courts below on the short ground that it was not shown that the change of user had caused any damage to the property. This appeal by the landlord is against the judgment of the High Court.

2. We have heard learned counsel for the parties. Section 13(1)(a) of the Bombay Rent Act, 1947 and clause (o) of Section 108 of the Transfer of Property Act, 1882, which are relevant, are as under :

"13. (1)(a) that the tenant has committed any act contrary to the provision of clause (o) of Section 108 of the Transfer of Property Act, 1882;"

"108. (o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;"

3. It is the admitted case that the ground floor of the premises in dispute is not being used for the purpose for which it was let out to the tenant. It is not disputed that the premises was taken on rent by the tenant for residential purposes, but later on he converted it for commercial purpose. The tenant has on the face of it violated the provisions of Section 108(o) of the Transfer of Property Act, which specifically says "but he must not use, or permit another use, the property for a purpose other than that for which it was leased". The landlord is, therefore, entitled to recover the possession from the tenant on the plain language of Section 108(o) read with Section 13(1)(a) of the Bombay Rent Act, 1947. Even otherwise we are not impressed by the argument that no damage was caused to the premises. Converting a residential premises into a sort of mini-textile factory is surely going to affect the residential utility of the premises. In this view of the matter we are not inclined to agree with the reasoning and the conclusions reached by the High Court. We set aside the High Court judgment and restore that of the trial court as upheld by the appellate court and direct the eviction of the tenant from the premises in dispute.

4. The appeal is allowed. No costs.

5. Keeping in view the facts and circumstances of the case, specially that the respondent shall have to remove his power looms and machinery from the premises, we give time to the respondent to vacate the premises on or before 31-8-1997 on the respondent's filing usual undertaking in this Court within eight weeks.