Abbobaker and Another

Vs

Mahalakshmi Trading Co.

Civil Appeal No. 757 of 1998

(S. Saghir Ahmed, G. B. Pattanaik JJ)

10.02.1998

JUDGMENT

G. B. PATTANAIK, J. –

1. Leave granted.

2. This appeal is by the landlord against the order dated 22-8-1996 passed by the Karnataka High Court in HRRP No. 1769 of 1995 arising out of HRC No. 66 of 1994. The appellant-landlord filed the aforesaid HRC case under Section 21(1)(j) of the Karnataka Rent Control Act against the tenant-respondent in respect of the premises in question. The aforesaid proceeding was ultimately disposed of on the basis of a compromise entered into between the parties and the terms embodied in the compromise petition dated 22-4-1994 formed a part of the decree of the Court. In accordance with the aforesaid compromise decree the tenant delivered the vacant possession of the tenanted premises and the landlord was permitted to demolish and reconstruct a new building thereon. It was also stipulated in the compromise that the tenant will be accommodated in the two shop rooms measuring 200 sq. ft. each on the ground floor soon after the new construction is over and be further accommodated in two shop rooms measuring 200 sq. ft. each in the cellar floor for the purpose of godown after the construction is over. Clause (5) of the compromise decree dealt with the rent to be paid by the tenant on occupying the premises in the new building after construction of the same. The dispute in the present case centres round the terms and conditions of the aforesaid clause (5) and what was the rent intended to be paid by the tenant for occupation of one shop in the cellar floor and one shop in the ground floor. The appellant-landlord on getting vacant possession of the tenanted premises, demolished the same and put up a new construction. The tenant-respondent filed a petition for getting possession of the newly-built shops in accordance with the compromise decree dated 22-4-1994 and the said petition was registered as Execution Petition No. 204 of 1995. In the said execution proceedings the appellant-landlord was set ex parte and the executing court directed issue of delivery warrant. Subsequently, under the orders of the executing court the lock was broken open and with the police help the tenant-respondent got the possession of the premises as per the compromise decree and the execution case was closed. The landlord-appellant approached the High Court against the order of the executing court directing delivery of the possession in favour of the respondent and obtained an interim order of stay of issuance of delivery warrant on 6-12-1995, but much before the said date the premises in question had been possessed by the respondent-tenant on 28-11-1995, and therefore, the interim order issued by the High Court became infructuous. The landlord-appellant before the High Court though raised a contention that the compromise decree could not have been executed but Mr. R. F. Nariman, learned Senior Counsel, appearing for the appellant did not press the same. The tenant thus has obtained possession of 400 sq. ft. of the newly-constructed building in execution of the compromise decree and that has become final. A further

contention had been raised by the landlord before the High Court to the effect that the compromise decree is an integrated one and under the decree though the tenant would be entitled to get possession of two shop rooms measuring 200 sq. ft. each after the new construction of the shop rooms is over but the said tenant is also liable to pay rent at a concessional rate of 25% less of the prevailing fair rent in the area and without discharging that obligation the tenant could not have merely obtained possession of the two shop rooms measuring 400 sq. ft. in execution of a part of the decree. The tenant, however, resisted the aforesaid contention by contending that the tenant would be liable to pay 25% less of the fair rent to be determined by the Controller under Section 14 of the Act and until that determination is made the landlord cannot resist the execution of the decree in relation to possession of the two shop rooms measuring 400 sq. ft. The High Court on consideration of the rival contentions and applying its mind to the terms and conditions of the compromise decree came to the conclusion that the parties waived under the agreement the provisions of Sections 26 to 28 of the Act and after construction of the new building the tenant is entitled to get possession of two shop rooms measuring 400 sq. ft. in accordance with the provisions of the compromise decree. The High Court further came to the conclusion that the fair rent for the premises has to be determined by the Controller under Section 14 of the Act, and therefore, it would be open for the parties to approach the Controller for fixation of fair rent in respect of the premises which has been put in possession of the tenant, so that, the Controller would determine the same and on such determination being made the tenant would be liable to pay the same at a concessional rate of 25% less of the fair rent. It is this direction of the High Court which is the subject-matter of challenge in the present appeal.

3. Mr. R. E. Nariman, the learned Senior Counsel appearing for the appellant, contended that the High Court committed serious error in falling back upon the provisions of the Act for the purpose of fixing the rent of the premises, possession of which had been given to the tenant under the compromise decree, having held that by the compromise entered into between the parties the provisions of Sections 26 to 28 of the Act have been waived. The learned Senior Counsel further urged that the expression "prevailing rent in the area" in clause (5) of the compromise decree is foreign to the criteria for fixation of fair rent of a building by the Controller under Section 14(6) of the Act and on a plain grammatical meaning being given to the words used in clause (5), the only conclusion that can be arrived at is that the parties intended that the tenant would pay rent at a concessional rate of 25% less of the prevailing rent in the area in respect of one shop in the cellar floor and one shop in the ground floor and the conclusion of the High Court to the contrary is wholly unsustainable. Mr. G. V. Chandra Shekhar, the learned advocate appearing for the respondent, on the other hand, contended that the use of the phrase "fair rent" in clause (5) of the compromise decree can only refer to the fair rent to be determined by the Controller under the provisions of the Act, and therefore, the impugned a order of the High Court is immune from interference by this Court. Mr. Shekhar further contended that allowing the landlord to charge rent for the premises higher than the fair rent to be fixed by the Controller would be against the public policy and would frustrate the object for which the very enactment was made and as such the Court should be slow in giving a meaning to the terms of a compromise which would be against the public policy. Mr. Shekhar further contended that in the absence of any mechanism as to how the prevailing rent in the area could be determined it would be only logical to hold that the parties intended under the aforesaid clause (5) for fixation of fair rent by the Controller in exercise of power under Section 14 of the Act.

4. Having considered the rival submissions at the Bar and having examined the terms and conditions of the compromise decree the question that arises for our consideration is : what in fact was intended by the parties with regard to the payment of rent in respect of the shops to be occupied by

the tenant in the new building after the construction is over ? To answer this question it would be appropriate to extract clauses (4) and (5) of the application for compromise which formed a part of the decree :

> "4. In the new building the petitioners shall accommodate the respondent in the two shop rooms measuring 200 sq. ft. each shown in red colour and demarcated as 'A' and 'B' comprised in the ground floor facing Azizuddin Road mentioned in the petition sketch soon after the new construction of the aforesaid two shop rooms is over.
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> In the new building facing Santhegalli Road, the petitioner also should accommodate the respondent in 2 shop rooms demarcated as 'C' and 'D' 200 sq. ft. each in the cellar floor for the purpose of godown as shown in green colour in the petition sketch after the construction of the same on or before 31-12-1995.

5. That the respondent is not liable to pay any deposit for any of the said new shop rooms both in the cellar and ground floor. However, the respondent shall pay rent at a concessional rate of 25% less of the prevailing fair rent in that area in respect of one shop in the cellar floor and one shop in the ground floor. And no concession in the fair rent will be allowed in the godown premises in the cellar floor and the other shop room in the ground floor facing Azizuddin Road."

As it transpires from the records of this case, the landlord had filed an application for demolition and reconstruction under Section 21(1)(j) of the Karnataka Rent Control Act (hereinafter referred to as "the Act"). Under the said provision the premises in question must be reasonably and bona fide required by the landlord for the purpose of immediate demolition and such demolition is to be made for the purpose of erecting a new building in place of the premises sought to be demolished. The aforesaid application was disposed of on the basis of the compromise arrived at between the parties as already stated and such order providing for redelivery of possession to the tenant after construction of the new building by the landlord is an executable decree and has been executed by the executing court. Under Section 21(1)(j) of the Act, the landlord has a right to evict a tenant from the premises in question, if he reasonably and bona fide requires the same, immediately for the purpose of demolishing and erecting a new building thereon. After obtaining an order of eviction and getting possession of the premises if the landlord does not demolish the premises in question within the period specified in the order then the tenant gets a right of re-entry for which purpose the tenant may give his landlord a notice of his intention to occupy the premises and the landlord has the obligation to deliver the vacant possession of the same to the tenant forthwith as per Section 26 of the Act. Under sub-section (3) of Section 26 a landlord can also be convicted if he fails to demolish and construct a new building without any reasonable excuse or fails to comply with the order of the Court. Section 27 of the Act confers a right on the tenant to get possession of the premises after the same be constructed and for that purpose the tenant has to give a notice to the landlord of his intention to occupy the new building on its completion and this notice can be served on the landlord within six months from the date on which the tenant delivered vacant possession of the premises. Thus, Section 27 recognises his right of re-entry into the reconstructed building on the terms and conditions mentioned therein. But in the case in hand the tenant has not taken the recourse to procedure prescribed under Section 27 for exercising his right of re-entry but on the other hand has got back possession by executing the compromise decree. When the High Court, as in the present case came to the conclusion that the parties to the compromise decree in fact waived the provisions of Sections 26 to 28 of the Act then necessarily it could not have arrived at the conclusion that in respect of the tenement now under occupation of the tenant in execution of the compromise decree fair rent has to be fixed by the Controller under Section 14 of the Act. The

tenant having executed the compromise decree providing for redelivery of possession to the tenant after reconstruction by the landlord without taking recourse to filing of application under Section 27 of the Act, is also liable to pay the rent as agreed to under the compromise decree in respect of the two shops measuring an area of 400 sq. ft. in the new building. The question, therefore, that arises is as to what was the rent agreed upon by the parties under clause (5) of the compromise decree ? Does it refer to the fair rent to be fixed by the Controller under Section 14 of the Act or it refers to the prevailing rent in the area in respect of the tenement in question. There is no dispute that under Section 14 of the Act the Controller has been vested with the power for fixing the fair rent of a building. In fixing such fair rent the Controller is required to take into consideration the rental value of the building as entered in the property tax assessment book of the local authority for the year in which the building was constructed as is apparent from Section 14(6) of the Act. Under the proviso to the said provision when no such records are available, the Controller may fix the fair rent calculated on the basis of six per cent per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the building on the date of the commencement of the construction. Thus, in the matter of fixation of fair rent under sub-section (6) of Section 14 of the Act the prevailing rent in the area is not germane and has no application. On the other hand, on the basis of relevant data in respect of the very building as provided in the statute the Controller is required to decide the matter and fix the fair rent. Judged from this standpoint the expression "prevailing rent in that area" used in clause (5) of the terms of compromise is suggestive of the only conclusion that the parties intended that the liability of the tenant to pay rent after occupying the new premises is at a concessional rate of 25% less of the rent which would be prevailing in the area in respect of similar premises. The word "fair rent" in clause (5) does not refer to the fair rent to be fixed by the Controller under the statute. The expression "fair" has been used in contradistinction with the expression "unfair" or "unreasonable". In other words, the prevailing rent in the area in respect of similar premises must be the reasonable rent received in the area in respect of similar premises and not a fanciful or whimsical rent which a particular tenant might be offering to a landlord in the area in question. In this view of the matter, we are of the considered opinion that the High Court committed an error in interpreting clause (5) of the compromise decree to mean that the tenant would be liable to pay rent at a concessional rate of 25% less of the fair rent to be fixed in respect of premises by the Controller under Section 14 of the Act. The said conclusion of the High Court is accordingly set aside.

5. The next question that crops up for consideration is how the prevailing fair rent in the area in respect of the remises can be arrived at. One possible mode is to call upon the Controller to determine the prevailing rent in the area in respect of the premises by taking evidence from the parties not being guided by the considerations of fair rent under the statute but in such a case the litigation will be protracted and the tenant would continue to occupy the premises without paying any rent therefor notwithstanding the terms of the compromise decree by which he is equally bound, as the landlord. We are not inclined to adopt this procedure as that would not be in the interest of justice. The other option available is to require a valuer to inspect the premises and submit a report for ultimate finding by this Court as to what would be the prevailing rent in the area but that procedure also would be subject to several imponderables and would take considerable time in arriving at any final conclusion. It is in this context in the course of hearing we had called upon the counsel appearing for the parties to indicate as to what would be the prevailing rent in the area in respect of the premises in possession of the respondent. While Mr. Nariman, appearing for the appellant indicated to us that the prevailing rent would be Rs. 8000 basically relying upon the rent which the appellant himself is receiving from other tenants @ 20 rupees per square ft., the learned counsel for the respondent on the other hand submitted that at the most it would be only Rs. 1000,

the city of Mangalore not having developed much in the last decade. The premises in question is located in the well-known city of Mangalore in the State of Karnataka. It is difficult to accept that a reasonable rent in respect of 400 sq. ft. would be a petty sum of Rs. 1000. But at the same time submission of the learned counsel for the respondent that the appellant's self-serving statement that he has let out premises in the area @ 20 rupees per sq. ft. cannot form the basis to arrive at any conclusion as to what would be the prevailing rent in the area, is also of great force. To avoid further protraction of litigation and for doing complete justice in respect of the matter in this appeal we think it appropriate to exercise our jurisdiction under Article 142 of the Constitution and to decide as to what would be the prevailing rent in the area for the purpose of enforcing clause (5) of the compromise decree. Having considered the relevant suggestions given at the Bar and the rent at which the respondent was occupying the earlier premises which stood demolished and the new constructions which have come up, we think it appropriate to hold that the prevailing rent in the area in respect of the premises in question should be Rs. 10 per sq. ft. and as such 400 sq. ft., in occupation of the respondent would fetch a rent of Rs. 4000 per month. But in terms of the compromise decree the respondent being entitled to occupy at a concessional rate of 25% less of the prevailing rent, he would be liable to pay Rs. 3000 per month and this he is required to pay from the date he has taken possession of under the orders of the executing court, and we accordingly so direct. The entire arrears till today should be paid within 3 months from the date of this order and he would continue to pay regularly at that rate until any further enhancement is made by the competent authority under the statute. Needless to mention if the respondent fails to pay the appellant the arrears of rent at the rate of Rs. 3000 per month within 3 months as indicated above then he would be liable to be evicted and the appellant can take steps for eviction of the respondent from the premises. This appeal is accordingly allowed with the aforesaid directions. There will be no order as to costs.