

Gujarat Steel Tube Co. Ltd.

Vs

Virchandbhai B. Shah and Others

SLP (C) No.14657 of 1999

(B. N. Kirpal, N. Santosh Hegde JJ)

12.10.1999

ORDER

1. The respondent had filed a suit against the petitioner herein for eviction of the premises which had been let by the respondents to the petitioner. During the pendency of the suit, an application under Section 11(4) of the Bombay Rent Act was filed. In this application, it was stated that the petitioner herein had not been paying the rent and, therefore, appropriate orders as contemplated by the said sub-section should be passes.

2. In the reply which was filed to the said application, it was, inter alia, contended that the petitioner company had become sick and a reference had been made to BIFR under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "the Act:"). The contention of the petitioner herein was that in view of the provisions of Section 22 of the Act no suit for recovery of money could be filed or proceeding taken against the present petitioner.

3. The trial court vide its order dated 25-1-1999 rejected the said application under Section 11(4) which was filed by the respondent. Thereupon a revision was filed and the Appellate bench of the Small Cause Chief Court, Ahmedabad by its order dated 12-7-1999 came to the conclusion that the provisions of Section 22 of the Act were not applicable in such a case. It placed reliance on a decision of this court in Shree Chanundi Mopeds Ltd. V. Church of South India Trust Assn.¹ The petitioner thereafter filed a civil revision before the High court but with no success.

4. It is submitted by Shri Ranjit Kumar, learned counsel for the petitioner that in view of the plain language of section 22 of the Act, the application under Section 11(4) of the Bombay Rent Act was not maintainable. He also contended that no notice as contemplated under Section 12(2) of the Bombay rent Act had been issued and, the question of and application under Section 11(4) being filed could not arise.

5. It is no doubt true that Section 12(2) requires a notice to be issued in the manner provided by Section 106 of the Transfer of Property Act before a suit for recovery of possession on ground of non-payment of rent can be filed. This is an objection to the maintainability of the suit which will have to be decided when the Court takes up for consideration the question as to whether order for eviction should be passed or not. Notwithstanding this objection having been taken, an application under Section 11(4) can be filed. The said sub-section reads as follows:

"11. Court may fix standard rent and permitted increases in certain cases.-(1)-(3) * *

(4) Where at any stage of a suit for recovery of rent, whether with or without a claim

for possession of the premises, the court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the court shall, and in any other case if it appears to the court that it is just and proper to make such an order the court may make an order directing the tenant to deposit in court forthwith such amount of the rent as the court considers to be reasonably due to the landlord, or at the option of the tenant an order directing him to pay to landlord such amount thereof as the court may specify. The court may further make an order directing the tenant to deposit in court periodically, such amount as it considers proper as interim standard rent or at the option of the tenant an order to pay to the landlord such amount thereof as the court may specify, during the pendency of the suit. The court may also direct that if the tenant fails to comply with any order made as aforesaid, within such time as may be allowed to it, he shall not be entitled to appear in or defend the suit except with leave of the court, which leave may be granted subject to such terms and conditions as the court may specify.

* * *"

6. While dealing with an application under Section 11(4), the court will have to apply its mind, take all facts and circumstances into consideration, and then decide whether it is just and proper to make an order requiring the payment of the rent by the tenant. At this stage, we are only concerned with the order passed on an application under section 11(4). The stage of considering the contention that a notice under Section 12(2) had not been issued had not arisen before the trial court. It is presumably for this reason that in none of the orders passed by the courts below there is any direct reference to any contention raised on the basis of Section 12(2) of the Bombay Rent Act.

7. It was submitted by Shri Ranjit Kumar that Section 22 of the Act after its amendment in 1994 does not permit the filing of any suit for the recovery of money. He submitted that the application which was filed for eviction by the landlord was to the effect that there were arrears of rent which had not been paid and, therefore, the court should order payment of rent and at the same time order eviction of the tenant on account of non-payment of arrears.

8. for the purpose of considering this contention we will proceed on the basis that tenancy of the petitioner had been terminated by a notice having been issued under Section 106 of the Transfer of Property Act. In other words, the petitioner was entitled, at the time when the application under Section 11(4) was filed, to the protection of the Rent Control Act and no more.

9. Section 22 no doubt, inter alia, states that notwithstanding any other law no suit for recovery of money shall lie or be proceeded with except with the sanction of the Board, but as we look at it the filing of an eviction petition on the ground of non-payment of rent cannot be regarded as filing of a suit for recovery of money. If a tenant does not pay the rent, then the protection which is given by the Rent control Act against his eviction is taken away and with the non-payment of rent order of eviction may be passed. It may be possible that in view of the provisions of Section 22, the trial court may not be in a position to pass a decree for the payment of rent but when an application under section 11(4) is filed, the trial court in effect gives an opportunity to the tenant to pay the rent failing which the consequences provided for in the sub-section would follow. An application under Section 11(4), or under any other similar provision, cannot, in our opinion, be regarded as being akin to a suit for recovery of money.

10. We may also point out that this court in *Shree Chamundi Mopeds Ltd.* had occasion to consider

the question as to whether an application for eviction under the Rent Control Act was maintainable notwithstanding the provisions of Section 22 of the Sick industrial Companies Act. It was held that on the termination of the contractual tenancy, the Karnataka Rent Control Act, with which the Court was concerned in that case, gave protection to a statutory tenant to continue to occupy the premises but the said right could not be regarded as property of the company for the purpose of sub-section (1) of Section 22 of the Act. The Court held That the provisions of Section 22(1) were not applicable to the eviction proceedings instituted by the landlord against the sick company. It appears to us that the aforesaid principle would be clearly applicable in the present case and appropriate orders could be passed under the relevant provisions of the Rent Control Act..

11. The High court and the Appellate Bench of the Small Cause Chief Court were, therefore, right in coming to the conclusion that the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 did not in any way prevent the filing of an eviction petition on the ground of non-payment of rent and the order under Section 11(4) of the Bombay Rent Act could be passed.

12. The petition is, accordingly, dismisses.