SUPREME COURT OF INDIA

Harshavardhan Chokkani

Vs.

Bhupendra N. Patel

C.A.No.6846 of 1999

(S. S. M. Quadri and Doraiswamy Raju JJ.)

28.02.2002

ORDER

1. This appeal from the judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad in C.R.P. No. 2236 of 1997 dated July 19, 1999 is by the tenant. The respondents are the landlords of a non-residential building bearing No. 4-6-244 (old No. 1883) Subhas Road, Subrie Street, Secunderabad which was earlier owned by one Smt. Pola Rajamaniamma who entered into an agreement of lease in regard to the ground floor of that building (for short, 'the premises') with the appellant. She sold the premises in favour of respondent No. 1 and one late Babu Lal Patel whose legal representatives are respondents Nos. 2 to 7. After the sale Smt. Pola Rajamaniamma sent a letter attorning the tenancy of M/s. Brij Mohan Chokkani and Sons (for short, 'the firm') in favour of respondents Nos. 2 to 7. Thereafter the rent was being paid by the firm to the said respondents and receipts therefor were being issued in favour of the firm. While so the respondents filed eviction petition in the Court of the Principal Rent Controller at Secunderabad against the appellant on various grounds under S. 10 of the *A. P. Buildings (Lease, Rent and Eviction) Control Act, 1960* (for short, 'the Act'). The appellant contested the eviction petition, inter alia, on the plea that he was not the tenant but the firm was the tenant of the premises, therefore, the eviction petition of the appellant was not maintainable. The learned Principal Rent Controller held that the firm was the tenant and dismissed the eviction petition on December 31, 1992. The respondent challenged the order of the learned Principal Rent Controller in the Court of the Chief Judge, City Small Causes Court at Hyderabad (the Appellate Authority under the Act). That finding of the learned Principal Rent Controller was confirmed by the Appellate Authority and the appeal was dismissed on February 26, 1997. Dissatisfied with the said judgment of the Appellate Authority the respondents filed C.R.P. No. 2236 of 1997 in the High Court. A learned single Judge of the High Court allowed the civil revision petition by order dated July 19, 1999. It is against that order that the appellant is before us in appeal by special leave. AIR 2000 Andh Pra 21

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2. Mr. Dhruv Mehta, the learned counsel appearing for the appellant contends that even before the attornment of the tenancy of the premises in favour of the respondents, the firm alone was the tenant; the firm was paying the rent and the erstwhile landlady was accepting the same and passing receipts in its favour. It was the tenancy of the firm but not the appellant that was attorned in favour of the respondents, therefore, the High Court has erred in holding that the appellant is the tenant of the premises. Mr. L. N. Rao, the learned Senior Counsel appearing for the respondents, has argued that merely by paying the rent the firm cannot become the tenant of the premises and that the letter of attornment does not carry the matter any further, because the firm was carrying on the business in the premises, the letter of attornment was addressed to the firm and that would not make the firm a tenant.

3. The short question that arises for consideration is : whether the High Court is right in interfering with the findings of fact recorded by the statutory authorities and holding that the appellant is the tenant of the premises.

4. The question whether the appellant or the firm is the tenant of the premises is a question of fact. A perusal of the judgment under challenge, passed in exercise of power under S. 22 of the Act, shows that the learned single Judge reappreciated the evidence. In so doing the High Court took note of the factors; that under the terms of the agreement of tenancy between the appellant and the previous landlady he was permitted to carry on the business of a partnership, that the amount of rent was being paid by the appellant before the constitution of the firm (however, it is also noted that thereafter the partnership firm was paying the rent); that the eviction petition was not filed on the ground of sub-tenancy; and that maintainability of the application was not put in issue by the respondents.

5. Taking the last ground first, a perusal of the order of the learned Principal Rent Controller shows that Issue No. 1 is the relevant issue and it reads as follows :

> "(1) whether it is the respondent or the firm Brij Mohan Chokkani and Sons who is the tenant of the suit premises?"

6. It is clear that the question who the tenant of the premises is, has been in issue and has fallen for consideration at all the stages of the case. Therefore, the High Court is not correct in proceeding on the assumption that the point was not put in issue. In regard to the terms of the rental agreement between the appellant and the erstwhile landlady, it is true that the appellant was permitted to carry on business of a partnership consisting of himself and members of his family but there exists a clear distinction between an individual tenant carrying on a business of partnership in the premises and a partnership firm being the tenant of the premises. Granting permission to the appellant to carry on partnership business does not per se foreclose the question whether the partnership firm is the tenant of the premises. It is true that by mere paying the rent, a person does not become the tenant and that fact, without anything more, will not be the determinative factor to hold that the payer of the rent is the tenant because more often than not an agent, a servant or a family member of the tenant also pay the rent for the tenant. Even before the purchase of the premises by the respondents the firm was paying the rent to their vendor; receipts for the rent were being

issued in favour of the firm by her. By the conduct of the parties - the firm and the vendor of the respondents - the firm had already become the tenant of the premises before purchase of the said building. This fact explains as to why the attornment of tenancy of the firm and not of the appellant was made in favour of the respondents. Even after the purchase of the premises by the respondents they continued to receive the rent of the premises regularly from and issue receipts in favour of the firm. It was nobody's case that the firm was the sub-tenant as such not filing eviction petition on the ground of sub-letting is an extraneous factor.

7. There can be no controversy about the position that the power of the High Court under S. 22 of the Act is wider than the power under S. 115, C.P.C. Nonetheless, the High Court is exercising the revisional power which in its very nature is a truncated power. The width of the powers of the revisional Court cannot be equated with the powers of the appellate Court. In examining the legality and the proprietory of the order under challenge, what is required to be seen by the High Court is whether it is in violation of any statutory provision or a binding precedent or suffers from misreading of the evidence or omission to consider relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like. It is only in such situations that interference by the High Court in revision in a finding of fact will be justified. Mere possibility of a different view is no ground to interfere in exercise of revisional power. From the above discussion, it is clear that none of the aforementioned reasons exists in this case to justify interference by the High Court.

8. For these reasons, we are unable to sustain the impugned order of the High Court. In our view, the appellate authority, after exhaustive consideration, has rightly confirmed the finding of the learned Principal Rent Controller that the appellant was not but the firm was the tenant of the premises, which did not warrant interference by the High Court. That being the conclusion, the eviction petition against the appellant is not maintainable. In the view we have taken, we consider it unnecessary to go into other aspects of the case.

9. In the result the order of the High Court, under challenge, is set aside and the eviction petition filed by the respondents is dismissed. The appeal is accordingly allowed but in the circumstances of the case without costs.

Appeal allowed.