SUPREME COURT OF INDIA

Vithal N. Shetti

Vs.

Prakash N. Rudrakar

(R.C.Lahoti, B Kumar and A Kumar JJ.)

20.11.2002

ORDER

1. This is tenant's appeal by special leave. Though the appeals are three in number, the subject matter is one common judgment and therefore, the three are being treated as one appeal. The suit premises are situated in the city of Pune and governed by the provisions of *The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947* (hereinafter "the Act" for short). The suit premises are admittedly owned by respondent No. 1 and are held in tenancy by the appellant. Proceedings for eviction of the appellants were initiated on very many grounds. At this state we are concerned only with the ground of eviction available order Clause (b) of Sub-section (1) of Section 13 of the (sic) which provides that a landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure.

2. Incidentally, it may be stated that the suit premises where initially owned by one Dattaraya Chiplunkar, who died in the year 1974 and his widow, having succeeded to the rights in the property, transferred the same to the respondent No. 1 in the year 1978. The appellant came in the possession of the premises sometime in the year 1981 having acquired the tenancy rights from his predecessor in interest - one Puram, who in turn had succeeded the tenancy rights from one Shri Niwas Patki, who was inducted as tenant in the year 1941 by Chiplunkar.

3. It is not disputed that in the year 1961, the tenant-appellant has raised a permanent structure over the tenancy premises. The structure raised by the appellant consists of a dinning hall, a kitchen and lavatory. According to the landlord-respondent No. 1, the said construction was carried out without obtaining consent of the landlord and without having the building plans sanctioned by the Municipal Corporation. The plea taken by the appellant in the written statement is one of denial of the ground. I so far as the consent of the landlord to the alleged construction is concerned, the tenant pleaded -- "Abutting to the road these defendants have constructed a building for restaurant in the year 1961. For that purpose the defendant 1 and 2 have taken a prior sanction of the Pune Municipal Corporation and also the owner Shri Chiplunkar". The trial court found the ground for eviction not made out. On an appeal preferred by the landlord-respondents, the decree of the trial court was reversed. In

the opinion of the appellate court, the ground for eviction under Section 13(1)(b) of the Act was made out. The aggrieved tenant preferred a petition under Article 227 of the Constitution in the High Court of Bombay, which has been dismissed.

4. The crucial issue for decision is whether it can be said that the permanent construction raised by the tenant-appellant had the consent in writing of the landlord as the law requires.

5. To being with, the written statement does not specifically plead the landlord having given the consent in writing for raising the permanent structure by the tenant. The particulars of the consent given by the landlord are also not pleaded. The vagueness in the pleadings raised in the written statement assumes some significance in the light of what transpired during the trial and before the High Court. It appears that the case sought to be projected by the tenant-appellant before the trial court was that he had obtained the sanction of the Municipal Corporation for the structure raised by him. He being the tenant, the Municipal Corporation would not sanction the building plans unless the application for sanction was accompanied by the consent of the landlord. Such consent was given by the landlord and formed part of the record in the custody of the Municipal Corporation. The tenant moved an application for obtaining certified copies of the relevant records but he was told that the record was not traceable. During the pendency of petition under Article 227 of the Constitution before the High Court on 1st July, 1985, the tenant-petitioner moved an application in the High Court submitting that the record which was earlier reported to be not traceable by the Municipal Corporation, was then traced out and, therefore, a prayed was made to the High Court for summoning the record from the custody of the Municipal Corporation. The High Court formed an opinion that the prayer for summoning the record could have been made to the trial court, which was not done, and therefore, there was no occasion much less a justification for allowing such a prayer made to the High Court which was clearly belated and that too made during the hearing of a petition under Article 227.

6. It was submitted by the learned counsel for the appellants that the landlord had given a consent in writing, which was to be found in the records of the Municipal Corporation and the High Court should have granted the appellants' prayer for summoning the record. It was further submitted that either the matter be remanded to the High Court with the direction to summon the record, or, in the alternative, this Court may summon the record from the custody of the Municipal Corporation. The prayer is vehemently opposed by learned counsel for the respondents submitting that the appellants' effort is to prolong the proceedings. It was submitted that there was no consent given and several relevant factors available on the record point out that the appellant is making an abortive attempt somehow to build up a case of consent wherein he has so far not succeeded.

7. Having heard the learned counsel for the parties, we are satisfied that no case is made out for interfering with the judgment of the appellant court as also the order of the High Court.

8. The plaint makes a positive averment of a negative fact, that is, the absence of consent in writing of the landlord to raising of the permanent structure by the tenant over the tenancy premises. In the wake of such averment in the plaint, it was necessary for the tenant to have

raised specific pleading in the written statement setting out the particulars of the consent in writing. Not only the particulars are not pleaded but event he factum of the landlord having given a consent in writing to the permanent construction is not stated. There is not even a whisper in the written statement of such consent, on which the tenant relies, having been ever given by the landlord and forming part of the record of the Municipal Corporation. If the Municipal Corporation had expressed its inability to make available certified copies of relevant records to the appellants, the appellants should have taken steps before the trial court for summoning the original record from the custody of the Municipal Authorities, which could have shown the bona fides of the plea raised by the tenant-appellant. Nothing such was gone. Similarly, no effort for production of the alleged consent on writing of the landlord appears to have been made during the pendency of the proceedings before the appellant court. In this background, the High Court rightly declined to show its indulgence to a belated prayer for summoning the record from the custody of the Municipal Corporation.

9. No fault can be found with the view taken by the High Court. The appeals are held devoid of any merit and liable to be dismissed. They are dismissed accordingly. However, in view of the fact that the tenant-appellant has remained in occupation in the suit premises for a long time and is running his commercial activities therefrom. The appellant is allowed 12 months' time for vacating the suit premises subject to his filing usual undertaking within a period of four weeks from today.