

SUPREME COURT OF INDIA

The Goa Urban Co-operative Bank Limited

Vs

Noor Mohd. Sheikh Mussa

Civil Appeal No. 4577 of 1999

(Rajendra Babu (CJI) and Ashok Bhan

05/07/2004

JUDGMENT

ASHOKBHAN, J.

1. Tenant being aggrieved by the order of eviction passed against him has come up in the present appeal.

2. Under an indenture of lease, Mussa Zaik Usman (predecessor-in-interest of the respondent-landlord) let out a portion admeasuring 47.04 sq. meters on the ground floor of 'Aaisha Theatre' Ponda-Margao Road, Ponda, to the Goa Urban Coop. Bank Ltd. the appellant herein, for a term of two years extendable by mutual consent at a rent of Rs. 200/- per month (hereinafter referred to as a 'demised premises'). Clause (6) of the lease specified:

"6. The Lessee shall utilize the premises for the functioning of its office."

3. The appellant shifted its office from the premises at Aaisha Theatre to the Navelkar building at the distance of about 100 meters and began to use the demised premises for keeping records. Mussa Zaik Usman on 15.5.1982 addressed a letter to the appellant that as it had shifted its Branch in the newly constructed Municipality building Ponda and the premises were lying closed and presumably

were being used as a godown; he called upon the appellant to vacate the demised premises. On 29.10.1984 the landlord wrote another letter to the appellant to vacate the premises and also stated therein that they would offer alternate premises for use as a godown for which purpose the demised premises were being used by the tenant. The response to the above letter, the Bank wrote to the landlord that they were willing to vacate the premises occupied by them provided the landlords offered them alternate space to store the records and furnish a declaration that the premises which were being vacated would be used by them for their bona fide personal use. The appellant gave certain specifications as per which the building was to be made ready for keeping the records of the bank.

4. On 17.10.1986 the General Manager/Secretary of the appellant addressed a letter to the landlords that 'we are thinking of leaving your premises in the Aaisha Theatre insisting for the alternative premises suggested by you in the Godown on the back side of your house". The final decision was to be taken as soon as the premises which were being constructed by the appellant were complete and which were expected to be completed latest by 31.3.1987. It was further stated that in the past the Bank had been releasing the premises under its tenancy for self-occupation of the landlord after obtaining declaration on oath. On 9.7.1987 the appellant wrote another letter in which it was stated:

"We are pleased to inform you that we have considered your request for vacating the premises in Aaisha Theatre Building favourably as the same are required by you for self occupation. After considering your offer of alternative premises we have finally decided not to accept the same as they are not suitable for our purpose." *

The landlords by their letter dated 17.3.1988 in response to the letter dated 9.7.1987 gave a declaration on a stamp paper duly authenticated by a Notary at Ponda. On 4.6.1988 the Bank informed the landlords that it was not willing to vacate the premises. On 17.4.1987 Mussa Zaik Usman expired.

5. On 26.2.1992 the respondent-landlords (hereinafter referred to as 'the respondents') being the successors of Mussa Zaik Usman, put the Bank on notice determining the lease and called upon the Bank to vacate the premises. The Bank sent a reply to the notice stating that as the workload had increased, the Bank had taken additional premises for running of the Branch and in the suit premises records and other materials connected with the Ponda Branch were stored.

6. The respondents thereafter on 11.2.1993 filed an eviction petition seeking the eviction of the Bank under Section 22(2)(b)(ii) and Section 23(b) of the Goa, Daman & Diu Buildings (Lease, Rent & Eviction) Control Act, 1968 (for short 'the Act') being Rent Case No. 2 of 1993 before the Additional Rent Controller, Ponda seeking the eviction of the appellant. Eviction was sought on the following grounds:

"i) The premises were not being used for the purposes for which they were let;

ii) The premises were lying closed for over four months before the institution of the proceedings;

iii) The premises were required by the landlords for their bona fide personal use." *

7. The appellant filed its written statement denying the contentions raised in the petition. The parties examined their respective witnesses and led the evidence. Both the parties examined four witnesses each.

8. Rent Controller held that the appellant had changed the use of the premises. The premises were being used a 'godown' and not as an 'office', the purpose for which the premises were let out. The premises were lying closed from 1982 to 1993 and therefore the landlord had ceased to occupy them for more than 4 months before the institution of the eviction proceedings. The eviction was ordered two grounds. The third ground of bonafide need for personal use was rejected. The Administrative Tribunal set up under the Act set aside the judgment of the Rent Controller. The respondents thereafter filed a writ petition in the High Court. The learned single Judge of the High Court reversed the judgment of the Rent Control Tribunal and restored the judgment of the Rent Controller. The Division Bench of the High Court dismissed the LPA filed by the appellant against the order of the learned Single Judge.

9. Record ex facie discloses concurrent findings on the respect of the purpose for which the premises were let out, i.e. the suit premises were let out for the purpose of 'office' establishment of the appellant and regarding shifting of such 'office' establishment of the appellant from the suit premises to Narvekar Building from the year 1982. There are also concurrent findings that the suit premises were being used by the appellant as a 'godown' during the period from 1982 to 1988. The Tribunal refused to order the eviction of the appellant from the suit premises solely on the ground that since June, 1988 the suit premises were being used for banking activities and therefore there was no change in the use of the building of the suit premises as on the date of the filing of the eviction petition. High Court reversed the finding of the Tribunal and held that once the ground for eviction on account of a change of use is proved then the right of the landlord to get it vacated cannot be taken away merely on account of subsequent act on the part of the tenant in restoring the use of the building for the the purpose for which it was originally let out. On facts also the High Court set aside the findings of the Tribunal being perverse based on misreading of the evidence that user of the building was restored for the original purpose for which it was let out after June, 1988. The High Court concluded that the use of the building as a godown had continued upto the date of filing of the eviction petition. The High Court further noted that the correspondence between the parties disclosed that the appellant had admitted that after the shifting of its office to Narvekar building the suit premises were being required for storing its record and at one point of time the appellant had planned to shift such records to their own building which was under construction at Porvorim. High Court took judicial notice of the fact that Porvorim is situated in the Taluka of Bardez whereas the town of Ponda, where the suit premises are situated, is miles away from Porvorium. It was held that if the appellant could operate its Ponda Branch in Narvekar Building while keeping the records at Porvorium, certainly it could not be said that the records kept in the suit premises were of day to day use of the appellant bank. High Court concluded that the records kept in the suit premises did not constitute Banking activities of the appellant.

10. The sole question to be decided in this appeal is as to 'whether the premises let out for use as

'office', as it is commonly understood, can be used as a 'godown' for storage of records alone and if it is so used, then does that amount to putting the premises to a different use by tenant than the one for which the premises were let out and the tenant become liable to be evicted in terms of Section 22(2)(b)(ii) of the Act?

11. 'Building' has been defined in Section 2(e) of the Act. It means and includes any building, or part of a building, which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes the garden, grounds and out-houses, if any, appertaining to such building or part of the building; any furniture supplied by the landlord for use in such building or part of the building, but does not include a room in a hotel or lodging house.

12. Section 22(2)(b) (ii) provides that the tenant shall be liable to be evicted if he uses the building for a purpose other than that for which it was leased.

13. Under the Act a building can be let out for use as a residence or for commercial use or for any other purpose. A building given for 'residence' can be identified in a lease deed as a house, kothi, villa, palace etc. All these terms indicate that the intended use of the building is for the residential purpose. A building given for 'commercial use' can also be variously identified as a shop, restaurant, cinema hotel, godown etc. 'For any other purpose' would include a factory, industry, manufacturing unit or some other such use which is not for either residential or commercial use. In all such cases different descriptions are indicated of different purposes to which a given demised non-residential building can be put to use and not to one 'identical purpose' as would be the case with a building given for residential purpose.

14. In the present case the building was let out for use as an 'office' as is clear from clause (6) of the lease deed. The words 'office' and 'godown' have not been defined in the fact. If the demised premises were let out as 'office' in the lease deed, it would be presumed that the parties have used the word 'office' in the sense in which it is understood in common parlance or as given in the dictionary. Similar would be the situation for the expression 'godown'. The meaning assigned to word 'godown' would be the one as understood in common parlance or as indicated in the dictionary.

15. The word 'office' has various meanings depending upon the context such as holding of an office, office bearer, office or profit or a place in a building used as a place of business / or where office work is conducted for non manual work.

16. The term 'Office' when it is used as a place of business or to conduct office work has been defined in Black's Law Dictionary as a 'place for the regular transaction of business or performance of a particular service'. In Webster's Encyclopedic Unabridged Dictionary of the English Language, 1996 edition, 'office' is defined as 'a room, set of rooms, or building where the business of a commercial or industrial organization or of a professional person is conducted; the main office of an insurance company, a doctor's office'. The Oxford Dictionary defines the term 'Office' to be 'a room or building used as a place of business, especially for clerical or administrative work'.

17. 'Business' has been defined in Black's Law Dictionary as 'activity or enterprise for gain, benefit, advantage or livelihood'.

18. It also defines the term 'Bank' as 'institution, usually incorporated, whose business it is to receive money on deposit, cash, cheques or drafts, discount commercial paper, make loans, and issue promissory notes payable to bearer, known as bank notes.'

19. In Aiyer's Law Lexicon the word 'godown' is defined as a 'store', a warehouse. Webster's New Twentieth Century Dictionary', Vol. I, Second Edition, defines the word 'godown' to mean 'in India, China, Japan, etc. a warehouse'. In the concise Oxford Dictionary, fourth Edition, the meaning of this word is given as 'warehouse in part of Asia, esp. India'.

20. 'Warehouse' has been defined in Law Lexicon of British India, 1940 Edition, as 'a warehouse is, properly speaking, a building used for the purpose of storing goods imported at a reasonable rent'. According to Stroud's Judicial Dictionary, third edition, a warehouse, in common parlance, certainly means a 'place where a man stores or keeps his goods which are not immediately wanted for sale'. In Webster's New Twentieth Century Dictionary, Volume II, second edition, it means a 'building where wares or goods are stored, as before being distributed to retailers, a storehouse.'

21. In *Des Raj vs. Sham Lal*, AIR 1980 P & H 229, the Full Bench of the Punjab and Haryana High Court held that where a premises is let out to the tenant as a shop and it is silent as regards the purpose for which it is let and it is used by the tenant exclusively as a godown then the tenant can be said to have changed the use of the premises and liable to be evicted in terms of the provisions of East Punjab Urban Rent Restriction Act, 1949. It was observed:

"This hypothetical discussion is meant to emphasise that where a demised 'building' is identified merely as 'shop', then the same can be used only as a 'shop', although various kinds of trade could be carried on therein, but if the same demised 'building' came to be used later on exclusively as 'residential building', then that would tantamount to the change of user. Similarly, if such a demised 'building' was put to use exclusively as a 'godown' (for the moment assuming that the expression 'godown' connotes a 'building' that is used for the purposes of only stocking provisions therein), then that would tantamount to the change of user. The reason being that when the demised 'building' is used as a 'shop', it is being put to constant use by the lessee which, by implication, ensures its proper upkeep like timely repair, timely white-washing etc. but when a building is used as a 'godown' which is merely used for dumping goods, therein, such an upkeep may neither be possible nor, by implication, envisaged as such. A 'godown' remains mostly closed, while a 'shop' remains mostly open. The premises used as a 'godown' are bound to deteriorate and a landlord, if had been informed at the time of entering into the lease transaction that the lessee intended to use the demised premises described as 'shop', he might not have agreed to enter into the said lease transaction. Hence, when the demised premises are used for a purpose to which having regard to its description as 'shop', 'house' etc. the landlord may not have intended, had the said different purpose, which the lessee had in mind, been made known by the lessee to him, then the landlord may not have agreed to lease the said building for that purpose (see in this connection *Telu Ram vs. Om Parkash Garg*, 1971-73 Pun

LR1). Hence putting to use the demised premises to a purpose, which the given description or identification of the demised building in the rent-note did not warrant, would tantamount to the change of user." *

22. Learned counsel appearing for the parties after due verification have confirmed that this judgment holds the field. No decision taking a contrary view was cited before us. We respectfully agree with the view taken by the learned judges of the Punjab and Haryana High Court in this judgment.

23. Letting out the premises for commercial purpose can have different colors and hues depending upon the purpose for which it is let out. For example a non-residential premises can be let out for commercial purpose for running a shop, office, restaurant, hotel, cinema and godown for storing of the goods etc. If it is specified in the lease deed that the premises be used for a particular commercial purpose than the change of use of the premises falling in another category of purpose would amount to change of user of the building falling within the four corners of Section 22(2)(b)(ii) of the Act and the landlord would be entitled to seek eviction of the tenant for having changed the use of the suit premises for a purpose other than for which it was let out. When the use of the building is identified in the lease deed as an 'office', it would be taken that the parties had used the expression 'office' in the sense in which the 'office' is understood in common parlance or as indicated by its dictionary meaning. Appellants have admitted that they have started using the building as a godown and the High Court has concluded that the suit premises were used as a godown after the shifting of banking activities of the appellant to Narevekar Building in the year 1982 and continued to be so used till the date of filing the eviction petition in the year 1992. Considering that the suit premises were let out for office use, mere storage of the books of accounts would not amount to use of premises for office purposes especially when the appellant has admitted that it has shifted its business of banking to Narvekar Building. When the building is let out as an 'office' then the same can be used only as an office and not as a godown where the goods are stored and that would tantamount to change of user.

24. It can be examined from another aspect and angle. Under the Banking Regulation Act, 1949, banking has been defined in Section 5(b) as 'banking means the accepting, for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise'. A Banking company has been defined to mean in Section 5(c) 'as any company which transacts the business of banking in India.'

25. Branch or Branch office has been defined to mean in Section 5(cc) as follows:

"branch' or branch office', in relation to a banking company, means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent, and for the purposes of section 35 includes any place of business where any other from the business referred to in sub-section (1) of Section 6 is transacted." *

26. Section 6(1) provides that in addition to the business of banking, a banking company may engage in any one or more of the business as given in clauses (a) to (o) of Section 6(1). Sub-section

(2) provides that no banking company shall engage itself in any form of business other than those referred to in sub-section (1).

27. Section 23 restricts the opening of new and transfer of existing, places of business without obtaining the prior permission of the Reserve Bank of India and it provides as follows:

"(a) no banking company shall open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India; and

(b) no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area:

Provided that nothing in this sub-section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the banking company already has a place of business, for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference or a mela or any other like occasion." *

28. The appellant had taken the demised premises on rent for the opening of its branch or branch office. The Branch office has been defined to mean a place at which deposits are received, cheques cashed or monies lent and includes any place of business where any other form of business referred to in sub-section (1) of Section 6 is transacted. A banking company cannot open a new place of business in India without obtaining the prior permission of the Reserve Bank of India. Similarly it cannot change its existing place of business situated in India otherwise than within the same city, town or village. Presuming that the appellant had changed its existing place of business within the same city, the question arises 'did they have the permission to continue with the banking activities at the suit premises which were taken by it for the opening of its branch office'? The appellant has not produced any evidence on this aspect. Respondents in their counter affidavit in the special leave petition have categorically stated in para 7 that 'the Bank does not even have the required permission from the Reserve Bank of India to carry on any banking activity in the suit premises'. This assertion has not been controverted by the appellant in its rejoinder. The building was taken on rent for use as an 'office' in which the appellant started transacting its banking activities and continued to do so till it shifted its banking activities in the view building at Narvekar Building. The suit premises ceased to be occupied as an office and were being used as a godown, which was a different purpose than the one identified in the lease deed.

29. The story put forth by the Bank that it had restored its banking activities in the suit premises by carrying on pigmy bank accounts and taking of electrical bills since 1988 has rightly been discarded by the High Court. Even if it is so assumed for the sake of argument, even then the appellant has failed to show that it had a valid permission for carrying on its banking activities at the suit premises. Appellant had already shifted its branch office for the banking activities to Narvekar Building and it has failed to show that it had the necessary permission from the Reserve Bank of

India to carry on with its banking activities at the suit premises as well. No other point was urged.

30. Learned counsel for the appellant has cited certain judgments to show that change of business in a shop from one trade to another does not amount to change of user. These judgments are not relevant for determining the controversy on the point under consideration. In all these cases the premises were let out for use as a shop for a specified trade such as cloth or cycle repairs etc. The tenant changed his trade and started using the shop for a different trade like dry cleaning or some other such trade. This Court held that change of trade may not amount to change of use of premises as the shop continued to be used as a shop. **In our opinion, the shifting of the activities from office purpose to godown purpose is a change of use of premises. It is not shifting of the business from one trade to another trade. #**

31. For the reasons stated above, we do not find any merit in this appeal and the same is dismissed with no order as to costs.