SUPREME COURT OF INDIA

Dinesh Kumar

Vs.

Yusuf Ali

C.A.No.4244 of 2006

(Dr.B.S.Chauhan and Swatanter Kumar JJ.)

26.05.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. This appeal has been preferred against the judgment and order of the High Court of Madhya Pradesh dated 25th January, 2006 passed in Second Appeal No. 726 of 2003 by which the High Court while allowing the Second Appeal reversed the judgment and decree dated 16th October, 2003 passed by the First Appellate Court in First Appeal No. 2/2003 by which the First Appellate Court had reversed the judgment and decree dated 13.12.2002 passed by the Trial Court in Civil Suit No. 30A/1999 allowing the application of the landlord for eviction of the tenant.

2. Facts and circumstances giving rise to this appeal are that the appellant-tenant was inducted by the respondent- landlord on 1.10.1978 in a shop in house No. 83, Main Street, Mhow for a non-residential purpose on a monthly rent of Rs.150/-. The respondent-landlord enhanced the rent from time to time and ultimately it was enhanced on 1.3.1995 to the extent of Rs.700/-p.m. The respondent-landlord had taken a sum of Rs.35,000/- as loan from the appellant-tenant.

> "Some amount therefrom was to be adjusted towards a part of monthly rent. Respondent-landlord filed suit No.30A/1999 on 1.4.1999 for eviction of the appellant on the grounds of nuisance and bone fide requirement for himself contending that he was carrying on business of plastic goods and shoes in a rented `Gumti' measuring 3 ft. x 4 ft. on a Nalla. Respondent was in need of the disputed shop for carrying on his business alongwith his son Zulfikar Ali. Parties exchanged the affidavits and examined large number of witnesses in support 2 of their respective claims before the Trial Court. The Trial Court, vide judgment and decree dated 13.12.2002, decreed the suit for eviction under Section 12(1)(f) of M.P. Accommodation Control Act, 1961 (hereinafter referred to as the `Act 1961') on the ground of bona fide need, however, did not accept the plea of nuisance."

3. Being aggrieved, the appellant preferred the First Appeal No.2/2003 before the First Additional District Judge, Mhow and the same was allowed vide judgment and decree dated 16.10.2003 on the ground that the landlord had enhanced the rent from time to time; his son had been in employment in Dubai, therefore, the bona fide need was a pretext to enhance the rent or evict the tenant.

4. Being aggrieved, the landlord-respondent approached the High Court by filing Second Appeal No.726 of 2003 under Section 100 of the Code of Civil Procedure, which has been allowed vide judgment and order dated 25.1.2006. Hence, this appeal.

5. Mr. Manish Vashisht, learned counsel appearing for the appellant has vehemently submitted that the High Court committed grave error in entertaining the Second Appeal though no substantial question of law was involved therein.

> "As to whether the courts below have rightly appreciated the evidence on record to find out as to whether need of the landlord is real and bona fide, is a question of fact. Therefore, the Second Appeal itself was not maintainable. The suit property is not required by the landlord as he is doing his business at another premises for last 35 years; his son is in employment in Dubai. Therefore, the appeal deserves to be allowed."

6. Per contra, Mr. A.K. Chitale, learned senior counsel appearing for the respondent-landlord has vehemently opposed the appeal contending that if the finding of fact recorded by the court below is found to be perverse, the High Court can entertain the Second Appeal and re-appreciate the evidence. The landlord is the best Judge to determine as to what is his requirement and what is the proper place of his business. A tenant cannot force the landlord to carry out his business in the rented premises of negligible dimension.

> "Therefore, the judgment and order of the High Court does not warrant any interference. The appeal is liable to be dismissed."

7. We have considered the rival submissions of learned counsel for the parties and perused the record. this Court held that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live.

> "This Court held that `bona fide need' should be genuine, honest and conceived in good faith. Landlord's desire for possession, however honest it might otherwise be, has, inevitably, a subjective element in it. The "desire" to become "requirement" must have the objective element of a "need"
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> which can be decided only by taking all relevant circumstances into consideration so that the protection afforded to tenant is not rendered illusory or whittled down."

8. The tenant cannot be evicted on a false plea of requirement or "feigned requirement". (See also Rahabhar Productions Pvt. 2507).

9. *Maharashtra & Anr.*[2] this Court emphasised the need for social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society[3].this Court held that while determining the case of eviction of the tenant, an approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises.

10. However, the bona fide requirement of the landlord must be distinguished from a mere whim or fanciful desire. It must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire.

11. The need should be bona fide and not arbitrary and the requirement pleaded and proved must neither be a pretext nor a ruse adopted by the landlord for evicting the tenant. Therefore, the Court must take relevant circumstances into consideration while determining the issue of bona fide need so that the protection afforded to a tenant is not rendered illusory or whittled down.

12. Second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence. The High Court should not entertain a second appeal unless it raises a substantial question of law. It is the obligation on the Court of Law to further the clear intendment of the Legislature and not to frustrate it by ignoring the same.

13. This Court held that existence of substantial question of law is a sine-qua-non for the exercise of jurisdiction under Section 100 of the Code and entering into the question as to whether need of the landlord was bonafide or not, was beyond the jurisdiction of the High Court as the issue can be decided only by appreciating the evidence on record.

14. There may be a question, which may be a "question of fact", "question of law", "mixed question of fact and law" and "substantial question of law." Question means anything inquired; an issue to be decided. The "question of fact" is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as under:- "A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong."

(Vide Salmond, on Jurisprudence, 12th Edn. page 69, cited *Vikhe Patil & ors.*[5],).

15. *Govind Morey*[6], this Court held that whether trial Court should not have exercised its jurisdiction differently, is not a question of law or a substantial question of law and, therefore, second appeal cannot be entertained by the High Court on this ground.

> *"by L.Rs. & Ors.*[7] this Court held that the question whether Lower Court's finding is perverse may come within the ambit of substantial question of law. However, there must be a clear finding in the judgment of the High Court as to perversity in order to show compliance with provisions of Section 100 CPC. Thus, this Court rejected the proposition that scrutiny of evidence is totally prohibited in Second Appeal.
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> this Court held that question of re-appreciation of evidence and framing the substantial question as to whether the findings relating to factual matrix by the court below could vitiate due to irrelevant consideration and not under law, being question of fact cannot be framed."

16. *Channabasappa & Ors.*[8] this Court held that it is not permissible for the High Court to decide the Second Appeal by re-appreciating the evidence as if it was deciding the First Appeal unless it comes to the conclusion that the findings recorded by the court below were perverse.

17. Court held that it is permissible to interfere even on question of fact but it has to be done only in exceptional circumstances.

18. The Court observed as under:-

> "While scrutiny of evidence does not stand out to be totally prohibited in the matter of exercise of jurisdiction in the second appeal and that would, in our view, be too broad a proposition and too rigid an interpretation of law not worth acceptance but that does not also clothe the superior courts within jurisdiction to intervene and interfere in any and every matter- it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extensor stands permissible it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection."

19. This Court reiterated the principle that interference in second appeal is permissible only when the findings are based on misreading of evidence or are so perverse that no person of ordinary prudence could take the said view.

20. More so, the Court must be conscious that intervention is permissible provided the case involves a substantial question of law which is altogether different from the question of law. Interpretation of a document which goes to the root of title of a party may give rise to substantial question of law.

21. *Maruti Garvali & Anr.*[10] this Court considered the scope of appeal under Section 30 of the Workmen's Compensation Act, 1923 and held as under:

> "Section 30 of the said Act postulates an appeal directly to the High Court if a substantial question of law is involved in the appeal..... A jurisdictional question will involve a substantial question of law. A finding of fact arrived at without there being any evidence would also give rise to a substantial question of law..... A question of law would arise when the same is not dependent upon examination of evidence, which may not require any fresh investigation of fact. A question of law would, however, arise when the finding is perverse in the sense that no legal evidence was brought on record or jurisdictional facts were not brought on record."

22. Similar view has been reiterated by this Court in.

> "This Court while dealing with the provisions of Section 21(1)(a) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and Rule 16 of the U. P."

23. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, held that the bona fide personal need of the landlord is a question of fact and should not be normally interfered with.

24. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the *Kay Iron Works Pvt. Ltd.*[12].

25. Thus, the law on the subject emerges to the effect that Second Appeal under Section 100 CPC is maintainable basically on a substantial question of law and not on facts.

> "However, if the High Court comes to the conclusion that the evidence on record recorded by the courts below are perverse being based on no evidence or based on irrelevant material, the appeal can be entertained and it is permissible for the Court to re-appreciate the evidence. The landlord is the best Judge of his need, however, it should be real, genuine and the need may not be a pretext to evict the tenant only for increasing the rent."

26. The instant case is required to be examined in the light of the aforesaid settled legal propositions.

27. The admitted facts of the case are that the suit property, 18 ft. x 14 ft. i.e. 152 Sq.ft., is situated at a main road in the market. The premises in which the landlord is running his business is 3 ft. x 4 ft. at a monthly rent of Rs. 75/-. The `Gumti' is situated on the Nalla on the land of Cantonment Board. The said `Gumti' belongs to one Mohd. Hussain who had established it by encroaching upon the land of the Cantonment Board. Son of the landlord,

namely, Zulfikar Ali is in service in Dubai for last several years. The suit premises was earlier on rent with Dental Surgeon Dr. Sharma from 1970 to 1978 who vacated it considering the need of the landlord. After eviction of Dr. Sharma, it was given on rent to the appellant at a monthly rent of Rs.150/-p.m. The rent was enhanced to the tune of Rs.400/-p.m. in 1990, to Rs.500/- p.m in 1991 and further enhanced to Rs.700/-p.m. on 1.3.1995. Landlord had taken loan of Rs.35,000/- from the tenant and a part of it was to be adjusted toward the monthly rent for the said premises.

28. The Trial Court after considering the pleadings framed as many as 10 issues. However, the relevant issues had been Issue Nos. 1 and 3 regarding the bona fide and real need of the landlord. After considering the evidence on record including increase in rent from time to time and the fact that after evicting Dr. Sharma, Dental Surgeon, in 1978, the landlord in spite of starting his business in the suit premises rented it out to the appellant, came to the conclusion that need of the landlord was bona fide as he was running his business on a rented premises having a very small area at an unhygienic place i.e. platform on a Nalla. No other alternative or convenient place was available to him to shift/start his business and there had been no increase in rent of the suit premises after 1995. The said findings have been disturbed by the First Appellate Court mainly on the ground that the landlord did not require the suit premises for running his business, rather it was a pretext to increase the rent as rent had been increased from time to time and the landlord did not occupy the premises after being vacated by Dr. Sharma, Dentist. These circumstances made it clear that the landlord wanted to achieve the ulterior purpose. The landlord could be the best Judge of his need but he cannot be an arbitrary dictator. There was no evidence to show that his son Zulfikar Ali was interested to come back and join his father in business.

29. The High Court reached the conclusion that the landlord, in spite of the fact that he was owner of the suit premises could not be forced to continue his business in a shop of negligible area in a `Gumti' made on platform on Nalla. Mere continuation of long tenancy could not be a ground to reject the case of bona fide need.

30. The admitted facts referred to hereinabove, make it clear that the appellant is enjoying the tenancy of the premises measuring 152 sq.ft. for the last 32 years. The landlord-respondent is running his business at a `Gumti' measuring 3 ft. x 4 ft. made on a platform on a Nalla in Cantonment Board established by encroaching upon the public land. The demand of plastic goods in which the landlord is dealing is increasing day by day. Undoubtedly after evicting Dr. Sharma from the suit premises, the landlord has not started his business in the said premises but the incidence which occurred several decades ago cannot be relevant to determine the actual controversy for the reason that need of the landlord is to be examined as per the circumstances prevailing on the date of the institution of the case. Thus, an incident too remote from the date of institution of suit may not be relevant for consideration at all. Undoubtedly, the rent has been increased from time to time and it is not the case of the appellant-tenant that the rent had been enhanced arbitrarily or unreasonably or it could not be enhanced in law. The fact that rent had not been enhanced since 1995, the First Appellate Court erred in drawing the inference that need of the landlord may not be bona fide and it

might be a pretext for increasing the rent or to evict the tenant. There is no pleading by the landlord that any attempt had ever been made by him to enhance the rent during the period of 7 years prior to the date of institution of the suit. Undoubtedly, Zulfikar Ali, son of the landlord is continuing his service in Dubai for last several years and he has not appeared in witness box to prove that he was willing to start business with his father, remains immaterial or cannot put balance in favour of the appellant-tenant for the reason that the landlord himself wants to start his business in the suit premises. Therefore, it remains immaterial whether his son, Zulfikar Ali wants to join his business or not.

31. In such a fact-situation, we do not find any fault with the judgment of the High Court that it has committed an error reaching the conclusion that finding recorded by the First Appellate Court were perverse.

32. However, in the facts and circumstances of the case, the High Court did not consider the relevant factors i.e. as what would be the magnitude of his business, partial eviction of the appellant could serve the purpose of both the parties.

33. Thus, in order to meet the ends of justice the appeal is allowed partly. The landlord/respondent shall recover possession of half of the area of the premises dividing the same either on the side of "Bohara Masjid" or on the other side.
Appeal stands disposed of accordingly. No costs.

[1]*AIR 1988 SC 1422*
[2]*AIR 1998 SC 602*
[3]*AIR 2001 SC 2896*
[4]*AIR 1998 SC 2730*
[5]*AIR 1994 SC 678*
[6]*AIR 1976 SC 830*
[7]*AIR 2001 SC 1273*
[8]*AIR 2000 SC 2108*
[9]*AIR 2007 SC 2306*
[10]*AIR 2007 SC 248*
[11]*AIR 2008 SC 2033*
[12]*AIR 2000 SC 1261*