

SUPREME COURT OF INDIA

Bhanwarlal Dugar

Vs.

Bridhichand Pannalal

C.A.No.4889 of 2010

(B. Sudershan Reddy and Surinder Singh Nijjar JJ.)

05.07.2010

JUDGEMENT

B.Sudershan Reddy, J.

1. Leave granted.

2. This is a landlord's appeal by Special Leave against the order of the High court reversing the concurrent decree of eviction from commercial premises at Guwahati in Assam. The Trial Court, the Appellate Court concurrently found that the respondent was a wilful defaulter and liable to be evicted. They have also found that the appellants herein required the premises for their own business purpose. The High Court in exercise of its jurisdiction under Section 115 of the Code of Civil Procedure reversed the concurrent findings of facts and accordingly dismissed the suit for eviction filed by the appellants against the respondents.

3. The premises in question is a commercial one. There is no dispute of landlord and tenant relationship between the parties.

“Only two substantial issues framed by the Trial Court were: (1) whether the respondent committed any default in payment of rents since April, 1993 as pleaded by the appellants? (2) Whether the appellants required the suit premises bona fide for their own use? On both the issues the Trial Court as well as the Appellate Court concurrently held in favour of the appellants.”

4. The High Court upon re-appreciation of evidence reversed the findings of the courts below.

5. In this appeal, Shri Vijay Hansaria, learned senior counsel appearing on behalf of the appellants strenuously contended that the High Court committed a manifest error in interfering with the concurrent findings of facts arrived at by the courts below by

reappreciating the evidence which is impermissible in law. He also contended that the appellants clearly made out and established their case that the respondent committed default in payment of rents since April, 1993 till the date of filing of the suit. The appellants have also successfully established that the premises in question is required by them for their own business purposes. His submission was that the High Court exceeded its jurisdiction in interfering with the concurrent findings of facts. Shri P.S. Narasimha, learned senior counsel appearing on behalf of the respondent contended that the High Court on facts was justified in reversing the findings of the courts below inasmuch as the findings recorded by the courts below were perverse in nature. It was submitted that the courts below committed serious error in exercise of their jurisdiction and ignoring vital evidence and in such circumstances the High Court was well within its jurisdiction to correct the errors committed by the courts below in exercise of their jurisdiction.

Bona fide Requirement of the Premises:

6. The appellants in their plaint in clear and categorical terms pleaded that the schedule premises is bona fide required by them "for their own use as they and their sons have to do their own business from the schedule premises,....." The respondent in the written statement pleaded that the schedule premises is not required bona fide by the appellants for their own use. That apart, it was further pleaded that the appellants already started new business in the year, 1997 in their own premises. "Besides this, the plaintiffs have a number of tenants under them such as Canara Bank, Madan Electricals etc. in the same building, but no case has been filed against them for vacating the premises which shows that the plaintiffs are not in need of premises for their own use and occupation....." Plaintiff No.2 examined himself as PW-1 in the present case. It is specifically stated by him that the premises is required for starting new business for own sons for which purposes they have sufficient funds and also can manage required resources from the financial institutions for starting new business. In the cross-examination it was suggested to PW-1 that he did not state in the plaint as to what type of business the plaintiffs intended to start in that premises. It was not suggested that the appellants did not possess the financial resources for commencing their own business in the suit premises.

“It was however, suggested that many other premises were under the occupation of the tenants which suggestion was accepted by PW-1.”

7. The Trial Court upon appreciation of evidence available on record found that the appellants/plaintiffs do not have any other "suitable place to start their own business except the suit premises which is situated on the ground floor". The Appellate Court without reappreciating the evidence available on record merely copied the findings of the Trial Court in verbatim. It is needless to state that a Regular First Appeal is nothing but rehearing of the suit and the Appellate Court is bound to appreciate the evidence available on record and arrive at its own conclusions. Only such conclusions arrived at upon appreciation of the evidence are conclusive and not normally interfered with by the revisional court by re-appreciating the evidence. In the case on hand the Appellate Court verbatim copied the

judgment of the Trial Court without any independent application of mind and assessing the evidence. The Appellate Court miserably failed to exercise its appellate jurisdiction. The High Court is right in observing that the Appellate Court merely reproduced the judgment of the Trial Court without any independent application of mind.

8. But the question that arises for our consideration in the present case is whether the Revisional Court is justified in re- appreciating the evidence and substituting its own findings on the ground that the Appellate Court did not consider the evidence properly? It is settled law that the High Court cannot re-appreciate the evidence and set aside concurrent findings of facts by taking a different view of the evidence. It is always open to the High Court to remit the matter if in its opinion the courts below did not consider the material evidence on record.

“In the instant case the High Court instead of remitting the matter for fresh consideration by the Appellate Court on the ground that the Appellate Court failed to consider the material evidence on record had chosen to undertake that responsibility upon itself which we find it difficult to sustain.”

WILFULL DEFAULT :

9. We find that the First Appellate Court committed same mistake even while considering the issue relating to wilful default alleged to have been committed by the respondent. On this issue also the Appellate Court merely re-produced verbatim judgment of the Trial Court.

10. Considering all the facts and circumstances as noticed above, we are constrained to hold that the order of the High Court cannot be sustained and as such we set aside the same and remit the matter to the First Appellate Court (Appellate Court of the Civil Judge No. 2, Kamrup, Guwahati) for hearing the appeal afresh for its disposal in accordance with law. It is needless to observe that the Appellate Court shall re-hear the matter and decide all the issues that arise for its consideration by properly re-appreciating the evidence available on record. The appeal shall be heard and disposed of within six months from today.

11. The appeal is, accordingly, allowed without any order as to costs.