SUPREME COURT OF INDIA

Kalidas Chunilal Patel

Vs.

Savitaben & Ors.

C.A.No.5674 of 2007

(Abhay Manohar Sapre and Ashok Bhushan,JJ.,)

29.06.2016

JUDGMENT

Abhay Manohar Sapre,J.,

1. This appeal is filed against the final judgment and order dated 17.06.2005 of the High Court of Gujarat at Ahmedabad in Civil Revision Application No. 110 of 1994 whereby the High Court allowed the revision application filed by the respondents herein and quashed the judgment/order dated 12.10.1993 passed by the District Judge, Bharuch in Civil Appeal No. 152 of 1982 and remanded the same to the District Judge, Bharuch.

2. In order to appreciate the short controversy involved in the appeal, few facts need mention.

3. The appellants are the plaintiffs-landlord whereas the respondents are the defendants-tenant.

4. The suit house is situated in village Sachan, Taluka Wagra, District Bharuch. One Bai Zaverben, widow of Chhaganbhai Govindbhai Patel was the owner of the suit house. She had let out the suit house to one Ranchhodbhai Govindbhai as her tenant on a monthly rent of Rs.3/-. He had also executed rent note in her favour. Bai Zaverben died in 1977. She had, however, executed a will in favour of one Kalidas Chunnilal Patel (the appellant herein-since dead and represented by his legal representatives) bequeathing the suit house to him. Kalidas Chunnilal Patel thus became the sole owner of the suit house on the strength of will after her death. The name of Kalidas Chunnilal Patel was accordingly mutated in revenue records as owner of the suit house. Kalidas Chunnilal Patel, by operation of law, then became landlord of the suit house

5. On 06.12.1978, Kalidas Chunnilal Patel served a legal notice to Ranchhodbhai Govindbhai demanding arrears of rent from 26.04.1976 to 06.12.1978 alleging that after the death of Bai Zaverben, he has not paid any rent to him. Kalidas Chunnilal Patel also demanded possession of the suit house alleging therein that he genuinely required the suit house for his

personal residence. It was also stated that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Act") does not apply to the suit house. Ranchhodbhai Govindbhai, on receipt of the notice, denied the allegations made therein by sending his reply.

6. This led to filing of the civil suit by Kalidas Chunnilal Patel being Regular Civil Suit No. 183 of 1979 against Ranchhodbhai Govindbhai in the Court of 2nd Joint Civil Judge (Sr. Division), Bharuch at Bharuch claiming a money decree to recover Rs.94/- towards the arrears of rent for the period 26.04.1976 to 06.12.1978, notice charges Rs.13/- and mesne profit at the rate of Rs.3/- per month from 06.12.1978. The plaintiff also claimed eviction of the defendant from the suit house on the ground of his personal need for residence. The defendant denied the plaint averments.

7. It may here be mentioned that during the pendency of the suit, the State Government issued a notification on 03.04.1980 under Section 2(3) and Section 6(1A) of the Act whereby the provisions of Bombay Rent Control Act were extended and made applicable to the area where the suit house was situated. In other words, on and after 03.04.1980, the rights of the landlord and tenant in relation to the suit house were to be governed by the provisions of the Act.

8. The Trial Court on the basis of pleadings framed issues. These issues were,

> "1) Whether the plaintiff proves that the defendant is in arrears of rent from 20.7.70?
>
> 2) Whether the plaintiff proves that he requires the suit premises for his bona fide use and occupation?
>
> 3) Whether the plaintiff proves that he has become the owner of the suit premises?
>
> 4) Whether the defendant proves that the plaintiff has filed this suit only out of malice because of their strained social relations?
>
> 5) Whether the defendant proves that he has paid up the rent upto 2.9.78 but he has not given any receipts?
>
> 6) Whether the defendant proves that greater hardship would be caused to him if the decree for possession is granted?
>
> 7) Whether the plaintiff is entitled to get the possession?
>
> 8) What amount, if any, the plaintiff is entitled to get?
>
> 9) What order and decree?"

9. The parties adduced evidence. Vide judgment/decree dated 18.10.1982, the Trial Court decreed the plaintiffs suit. It was held that the plaintiff is the landlord of the suit house whereas the defendant is his tenant, that the defendant is in arrears of rent for the period specified in the plaint, that the provisions of the Act are not applicable to the suit house, that the plaintiff has terminated the defendant's monthly tenancy by serving proper quit notice under Section 106 of the Transfer of Property Act, that a case is made out by the plaintiff for passing a decree for possession against the defendant in relation to the suit house.

10. The Trial Court, with these findings, passed money decree towards arrears of rent, notice charges and mesne profits and further passed the decree for possession against the defendant in relation to the suit house.

11. The defendant, felt aggrieved, filed first appeal being Civil Appeal No. 152 of 1982 before the Court of District Judge, Bharuch. Since in the meantime, original plaintiff and defendant both expired and hence their legal representatives were brought on record to enable them to continue the lis.

12. In appeal, the appellate Court examined the question regarding the applicability of the provisions of the Act to the suit house. Indeed, we find from Para 14 of the appellate judgment that it was conceded by the parties through their lawyer that the provisions of the Act are applicable to the suit house. In this view of the matter, the appellate Court proceeded to examine the next question as to whether it is necessary to remand the case to the Trial Court once it is held that the provisions of the Act applies to the suit house. The appellate Court, however, came to a conclusion in Paras 16 and 17 that since the plaintiff has already pleaded that his case also satisfies the requirements of relevant provisions of the Act and that pleadings are in conformity with the requirements of the Act, it is not necessary to remand the case to the Trial Court for its retrial under the Act nor it is necessary to send this case to the Rent Tribunal by virtue of Section 28 of the Act, which enables the Court to decide the suit.

13. The appellate Court, accordingly, proceeded to examine the case on merits with a view to find out as to whether the plaintiff was able to make out any case under the Act and, if so, whether the decree passed by the Trial Court for arrears of rent holding the defendant to be the defaulter under the Act and further whether the decree for eviction passed against the defendant on the ground of plaintiff's personal need for his residence is legally and factually sustainable and whether it can be held to have been passed in conformity with the provisions of the Act.

14. The appellate Court, on appreciation of evidence, held that the plaintiff was able to make out a case that the defendant was a defaulter in payment of monthly rent and that he failed to pay the arrears of rent for a period specified in the plaint thereby incurred a penalty of being evicted from the suit house as provided under the Act. So far as the issue regarding plaintiff's personal need was concerned (Point No.3), the appellate Court held in Para 22

that the counsel for the respondents has conceded that the respondents do not wish to challenge the finding of the Trial Court on this issue.

15. In the light of such concessional statement made, by which the challenge to the finding of the Trial Court on the issue of personal necessity was expressly given up by the respondents, the appellate Court was right in upholding the finding of the Trial Court on this issue. It is after recording these findings, the appellate Court dismissed the appeal and upheld the judgment/decree of the Trial Court though on different reasoning of its own.

16. The defendants, felt aggrieved, filed civil revision in the High Court. By impugned order, the High Court allowed the revision and set aside the judgment/order of the first appellate Court and remanded the case to the appellate Court with directions.

17. It is apposite to quote the directions of the High Court contained in the concluding Para of the order:

> "The Revision Application is allowed. The judgment and order dated 12th October, 1993 passed by the learned District Judge, Bharuch in Civil Appeal No. 152/1982 is quashed and set aside. The Civil Appeal is remanded to the learned District judge, Bharuch. The learned District Judge, Bharuch shall remand the Regular Civil Suit No. 183/1979 to the trial court with appropriate direction either to transfer the suit to the Rent Court or to allow amendment of the pleadings and to continue the suit as one under the Rent Act. Rule is made absolute to the aforesaid extent. The parties shall bear their own cost. The Registry shall send the writ forthwith."

18. It is against the aforesaid order, the plaintiffs filed this appeal by way of special leave before this Court.

19. Mr. Mayur R. Shah, learned counsel appeared for the appellants. No one appeared for the respondents despite service.

20. It may be mentioned that during the pendency of this appeal, respondent No. 2, who was one of the legal representatives of original defendant, died. Since his interest was sufficiently safeguarded by the other respondents, who are related to him and hence, in our view, it is not necessary to bring his legal representatives on record and instead his name be deleted from the cause title. It be accordingly done.

21. Having heard the learned counsel for the appellants (plaintiffs) and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order restore the order passed by the appellate Court.

22. In our considered opinion, the High Court erred in allowing the Revision Petition filed by the defendants-tenant and thereby erred in setting aside the order of the appellate Court.

Similarly, the High Court erred in remanding the case to the appellate Court by giving directions as to how the issue arising in the case needs to be decided.

23. In our considered opinion, the High Court failed to see that the question as to whether provisions of the Act are applicable to the case at hand by virtue of notification issued during the pendency of the civil suit had become insignificant and was of no consequence. It was for the reason that the appellate Court had already examined all the issues arising in the case in the light of the provisions of the Act and then held that the plaintiff is the owner of the suit house, that the defendant was the defaulter in paying monthly rent and was in arrears and the plaintiff's personal need for residence in the suit house is bona fide etc.

24. In other words, when the appellate Court had already examined all questions arising in the case as if the provisions of the Act are applicable to the suit house and then recorded the aforementioned findings in plaintiff's favour, there was no need for the High Court to remand the case again to the appellate Court for deciding the same issues. It was, in our opinion, an exercise in futility and was not called for.

25. Instead, in our view, the High Court should have examined the legality of the findings on merits with a view to find out as to whether the appellate Court was justified in recording the findings in plaintiff's favour or not.

26. It is a settled law that when the first appellate Court, on appreciation of evidence, records a finding of fact on a particular issue then such finding is usually binding on the High Court while hearing revision against such order. It is only when any finding of fact is found to be wholly perverse or de hors to any provision of law or is recorded contrary to pleadings and evidence on record, interference in such finding may arise in appropriate cases but not otherwise. _

27. We have perused the judgment of the Trial Court and first appellate Court and find that no case is made out to interfere in the findings recorded by the first appellate Court.

28. In the first place, we find that all the findings recorded by the first appellate Court are based on proper appreciation of evidence. Secondly, these findings are recorded in the light of requirement of provisions of the Act after reversing the finding of the Trial Court on the issue of applicability of the provisions of the Act. Thirdly, the respondents are not here to convince us as to why the findings of the first appellate Court were not binding on the High Court and why they were required to be set aside. Fourthly, we have also not been able to notice any kind of infirmity in any of these findings so as to call for any interference in this appeal and lastly, in the light of findings, namely, that the defendants are defaulters in paying monthly rent and that the plaintiff's need for residence in the suit house is bona fide and that the defendant was not able to prove greater hardship if the eviction decree is passed against him, in our view, the decree for eviction, arrears of rent and mesne profit was rightly passed against the defendant in relation to suit house. Since these findings were rendered in

conformity with the requirements of the Act, we find no good ground to set aside these findings.

29. In the light of foregoing reasons, we are of the view that the High Court committed an error in remanding the case to the appellate Court for deciding these very issues afresh on their merits without there being any reason much less justifiable reason for passing such order.

30. Learned counsel for the appellants, however, argued the legal issue regarding the applicability of the Act to the suit house during the pendency of the suit. He placed reliance on the decisions of this Court in *Moti Ram vs. Suraj Bhan & Ors.*[1], and *Shah Bhojraj Kuverji Oil Mills & Ginning Factory vs. Subhash Chandra Yograj Sinha*[2], in support of his submission. In our view, it is not necessary to go into this question any more much less in detail in the light of our reasons given above.

31. In view of foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside and that of the order of the appellate Court restored.

32. The respondents are granted three months' time to vacate the suit house provided they deposit the entire decreetal amount within one month and give usual undertaking before the Trial Court to vacate the suit house on or before three months and pay damages at the same rate of rent for three months for use and occupation of the suit house. Let the compliance be made within one month.

33. Failure to comply within time would disentitle the respondents to remain in occupation for three months and the appellants would be entitled to execute the decree against the respondents on the expiry of one month from the date of this judgment.

34. No costs.

Judgment Referred.

[1]*(1960) 2 SCR 0896*
[2]*(1962) 2 SCR 0159*