BOMBAY HIGH COURT

D.N. Cooper

Vs

Shiavax Cowasji Cambata

(M.C. Chagla, C.J. Gajendragadkar, JJ.)

19.07.1948

JUDGMENT

M.C. Chagla, C.J.

1. This is an appeal from the judgment of Mr. Justice Desai, and the question that arises for determination is whether the plaintiffs who are the landlords are entitled to eject their tenants, the defendants. The defendants were the monthly tenants of the plaintiffs and on July 23, 1947, they sublet their tenement. The plaintiffs gave a notice to the defendants terminating the tenancy.

2. The first contention that has been raised by Mr. Parpia on behalf of the tenants is that the notice to terminate was not a valid notice inasmuch as only a month's notice was given, whereas the agreement between the parties required that the notice should be of two months' duration. The agreement between the parties provides that the lessors shall let to the lessees the tenement in question for their use and occupation on a monthly tenancy, and then states the rent which has got to be paid. Clause 9 of the lease provides that either party desiring to terminate the tenancy at or after the expiration of the aforesaid period was to give two months' previous notice ending with the calendar month. Now, it is clear that this particular clause was intended to operate only if the tenancy was for a fixed period. The agreement to lease is in a printed form, and the print with regard to Clause 1 which sets out the period of the tenancy and the rent clearly shows that a tenancy for a fixed period was intended and the blank was to be filled in to show what was the period of the tenancy. As this particular tenancy was a monthly tenancy, the print in Clause 1 is struck off and a typed statement is incorporated which states that the tenancy between the parties is not a tenancy for a fixed period, but a monthly tenancy. It is, therefore, clear that Clause 9 was abrogated as soon as the parties agreed that the tenancy was to be a monthly tenany. It is impossible to contend that although the tenancy was a monthly tenancy, the notice that was to be given was a notice of two months. The very definition of a monthly tenancy is that it is a tenancy for an indeterminate period which can be determined by a month's notice.

3. But the more substantial point which has been urged both by Mr. Parpia and by the Advocate General is whether the tenant continues to be protected under the Bombay Rent Restriction Act, and whether Mr. Justice Desai was in error when he passed a decree for ejectment against the tenants. One of the terms of the tenancy agreement is that the lessee shall not sub-let or part with the possession of the demised premises or any part thereof to any other party or parties without the previous written consent of the lessors and subject to all the covenants and conditions contained in the agreement. Now, it is not disputed in this case that the tenants have sublet their premises without the previous written consent of the landlords ; and Mr. Justice Desai held that in doing so the tenants had failed to perform the conditions of their tenancy, and, therefore, they were not protected under Section 9 of Act VII of 1944. As against this, the Advocate General contends that under Section 10 the tenant is entitled to sublet, notwithstanding the fact that the tenancy agreement does not permit him to do so without the previous consent of the landlord, and that an additional right is given to the tenant, the exercise of which protects him from ejectment, although in doing so he may commit a breach of the tenancy agreement. Now, Section 10 permits a tenant to sublet any portion of his premises to a sub-tenant provided he satisfies two conditions : He must forthwith intimate in writing to his landlord the fact of his having so sub-let the premises and also he must inform the landlord as to the rent at which the premises have been sub-let. And this right is given to the tenant notwithstanding anything to the contrary in any law for the time being in force. The law with regard to sub-letting is contained in Section 108 of the Transfer of Property Act, and that section deals with the rights and liabilities of lessor and lessee and in Sub-clause (j) the lessee is given the right to transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. Now, it is to be noted that the right given to the lessee under Sub-clause (j) is an unrestricted right. It is not conditioned by either the lessee having to inform the lessor that he has sub-let the premises or the rent at which he has done so. But the whole of Section 108 is subject to this important proviso that Section 108 only applies provided there is no contract or local usage to the contrary, which means that the law as embodied in Section 108 applies to lessors and lessees unless they choose to make their own law as it were and embody it in their own personal contract. If the lessor and lessee choose to make a contract and lay down their rights and obligations, then Section 108 says that the law incorporated in Section 108 shall not apply to the lessor and lessee, but what will apply to them is their own contract and they would be governed by the conditions of that contract.

4. Now, the Advocate General urges that Section 10 gives the right to a tenant to sub-let even though in the contract between him and his landlord such a right is not given to him. In other words, according to the Advocate General Section 10 deals with not only the law as embodied in Section 108 but also with a contract arrived at between the landlord and the tenant. According to

him we must read Section 10 to mean not only notwithstanding anything to the contrary in any law for the time being in force, but also notwithstanding anything to the contrary in any contract between the parties. Now, it is a fundamental

canon

of construction that a Court of Law would not permit the sanctity of obligations or of contracts to be interfered with unless the statute in express terms permits a violation of that sanctity. In the case before us, not only there are no express words in Section 10, but what is important and significant is that in Section 9 the sanctity of contract between the landlord and the tenant is fully respected and given effect to. Because the very basis of the tenant's protection under Section 9(2) is that he must pay rent to the full extent allowable by the Act and he must perform the other conditions of his tenancy. If one of the conditions of the tenancy is that he shall not sub-let without the previous consent of the landlord, then Section 9(1) says that the tenant must perform that condition if he wishes to avail himself of the protection given to him under that sub-section. Now, according to the Advocate General Section 10 overrides Section 9, and in effect lays down that it is open to the tenant to violate at least one term of his tenancy. The Advocate General concedes that there is a repugnancy as between Section 9 and Section 10, and he is driven to the position that the only way that repugnancy can be reconciled is by giving to Section 10 the effect of overriding Section 9 at least in one material particular. In our opinion that is not the proper way to construe Sections 9 and 10. Again, the ordinary canon of construction is that when there are two sections in the statute, the Court must try and reconcile both the sections, unless a subsequent section in terms provides that what is contained in that section is to operate as a proviso to the earlier section or it is to be considered as overriding the provisions of the earlier section. Section 10 does not state that what is contained in that section is to operate notwithstanding what is contained in Section 9, and, therefore, the only way to reconcile Sections 9 and 10 is that Section 10 does not deal with contracts between the parties at all. It only deals with the law as it obtains between the landlord and tenant, and provides for a tenant being able to sub-let only on certain terms even though those terms may be different from or contrary to the law regulating the relations of landlord and tenant. It is not as if Section 10 is wholly redundant. The Advocate General says that a tenant had already a right to sub-let under Section 108 ; if that right was merely to be recognised, there was no need to enact Section 10. But Section 10 restricts the right of the tenant to sub-let under the ordinary law. As we have already pointed out, whereas under Section 108(j) the right of the tenant to sub-let was unrestricted, under Section 10 that right is circumscribed by two conditions: (1) that he must intimate in writing to the landlord the fact of his having sub-let the premises, and (2) he must inform him as to the rent at which the premises have been sub-let.

5. The history of the legislation with regard to the right of the tenant to sub-let is interesting and throws considerable light on the construction we must put upon Section 10. The Bombay Rent Registration Order of 1942 was amended by a Notification dated September 13, 1943, which made a tenant liable to be ejected if he sub-let the premises without the written permission of his landlord after the date of that Notification. Therefore, this Order took away the right of the tenant

which he had under the ordinary law of sub-letting without the permission of his landlord in the absence of any contract to the contrary, and it went to the length of penalising such sub-letting by making the tenant liable to be ejected. Then came the Notification dated January 6,1944, which further amended the Bombay Rent Restriction Order of 1942 and that amendment was practically in the same terms ass. 10 of the Act of 1944, although the Notification of January 6, 1944, did not expressly render the tenant liable to be ejected if he sub-let the premises without intimating in writing to his landlord the fact of his having so sub-let and also the rent at which they were sub-let. Therefore, the law was rendered less drastic as far as the tenant was concerned. He was not compelled to take the permission of his landlord in the case where there was no such term in the contract between them, but he had to comply with the two conditions to which we have referred. Now, according to the Advocate General the tendency of the Legislature is to protect the tenant to such an extent that the Legislature intended that he should be given the right to sub-let even though he had no such right under the contract between him and his landlord; and the Advocate General wants us to construe Section 10 in order to give effect to the tendency of modern legislation which is intended for the protection of tenants. Courts must try and not deter the Legislature from carrying out its object so long as it is possible to do so. But if the Legislature fails to carry out its object by giving proper expression to it by using adequate language for the purpose, the Court cannot violate the canons of construction merely for the purpose of assisting the Legislature for a supposed object which it might have. But in this case it is not even clear that that is the tendency of modern legislation and the Legislature intended to give the tenants an unrestricted right to sub-let. Because when we come to the latest Act, viz. Act LVII of 1947, we find that Section 15 of that Act contains a complete prohibition against the tenant to sub-let; and Section 13 goes to the length of providing the landlord with an additional ground for ejecting the tenant if the tenant sub-lets his premises. Therefore, if one is entitled to consider the object of the Legislature and the tendency of legislation, the latest Act seems intended to be against the right of the tenant to sub-let, rather than in favour of giving the tenant an unrestricted right to sub-let, even contrary to the provisions contained in the contract between the landlord and the tenant.

6. Our attention has also been drawn to various judgments of single Judges which have considered this question. Mr. Justice Coyajee had to consider the construction of Section 10 in Lazarus Franck v. Solomon A. Zulaikha,1 but the views of the learned Judge were obiter because what he ultimately held was that there was a complete assignment of the premises and not-sub-letting, and, therefore, Section 10 had no application. The views of Mr. Justice Bhagwati in *Kaikhuskroo Bazonji Kapadia v. Dhanjishaw Hormusji Joshi*[1] on the construction of Section 10 were also obiter. I also happened to have expressed certain views in a case that came before me when I was sitting on the Original Side in *Suleman Haji Ahmed Oomer v. J.E. Tattersall*[2] Mr. Tendolkar (as he then was) argued at the Bar that the tenant was not protected because he had not

sub-let a part of the premises but he had sub-let the whole of the premises and in doing so he had deprived himself of the protection afforded by Section 10 of the Act. I took the view that Section 10 referred to sub-letting not only a part but the whole of the premises. But it must be admitted that it was conceded by Mr. Tendolkar that Section 10 did apply although there was a condition in the lease which required the previous consent of the landlord before the tenant could sub-let the premises, and in coming to the conclusion that the tenant was protected and the plaintiff was not entitled to eject the defendant I took the view that Section 10 gave the protection to the tenant notwithstanding any contract to the contrary. But the point was not argued and as we have just remarked my judgment proceeded on the concession made by Mr. Tendolkar.

7. The same point came for consideration before Mr. Justice Weston *in Piarelal Tulwar v. Pestonji Kooverji Sethna*[3]. There also the learned Judge's observations were obiter, although Mr. Justice Weston took the view which we are now taking and which Mr. Justice Desai in the Court below took that the expression "notwithstanding any law to the contrary" cannot be read to mean also notwithstanding any contract to the contrary.

8. The result, therefore, is that inasmuch as the tenant has sub-let the premises without the previous consent of the landlord, he is not protected under Section 9. He has not performed one of the conditions of his tenancy. We, therefore, agree with the view taken by Mr. Justice Desai who passed a decree for ejectment in favour of the plaintiffs. The result, therefore, would be that the appeal fails and must be dismissed with costs.

Cases Referred.

1(1947) O.C.J. Suit No. 1983 of 1945
2(1944) O.C.J. Suit No. 965 of 1944
3(1946) Civil Revision Application No. 109 of 1946