BOMBAY HIGH COURT

Madhusudan

Vs.

P.M. Gidh

Special Civil Appln. No. 1612 of 1977

(Chandurkar, J.)

20.09.1977

JUDGEMENT

Chandurkar, J.

1.The main question of law which has been argued in this petition on behalf of the petitioner, who was the original licensee of the premises in question, is whether the suit filed by his licensors in respect of the premises of which respondent No. 1 was alone the tenant and whose tenancy was already terminated by the landlord was not maintainable against him in view of the provisions of Section 15-A read with Section 14 (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the " Rent Act").

2. The facts out of which this petition arises are not in dispute. The subject-matter of the dispute is a room of which respondent No. 1 is the tenant. The owner of the premises is not a party to any of these proceedings. The petitioner was admittedly allowed to occupy the room on leave and license basis by an agreement dated 31st July 1969 which was in the name of the wife of respondent No. 1 who is also respondent No. 2 plaintiff No. 2. From time to time this agreement came to be extended and was renewed upto 30th April 1972, but admittedly even thereafter the petitioner continued to occupy the premises. Plaintiff No. 1 tenant who had shifted to Government accommodation, however, was due to retire on 31st August 1975 from Government employment and he, therefore, called upon the defendant to vacate the premises on 31st August 1975 by a letter dated 24th July 1975. The petitioner having failed to vacate the premises, respondent No. 1 plaintiff No. 1 filed an ejectment application under Section 41 of the Presidency Small Cause Courts Act. In those proceedings the petitioner took a defense that his license was subsisting on 1st February 1973 and he was, therefore, entitled to the protection under the Rent Act. That application filed by plaintiff No. 1 came to be rejected. The plaintiff treated the petitioner as a tenant and served a fresh notice calling upon the petitioner to vacate the premises on 26th April 1976 on the ground that the plaintiffs needed the premises for his

personal occupation. The petitioner having failed to vacate the premises, a suit for eviction came to be filed against him by both the respondents.

3. Apart from the challenge to the *bonafide* requirement of plaintiff No. 1, the maintainability of the suit was itself challenged. The trial Court passed a decree in favour of the plaintiffs. The notice was held to be valid; the suit was held to be maintainable; the requirement of plaintiff No. 1 was held to be proved and on the issue of hardship, the trial Court found that greater hardship would be caused to the plaintiffs if a decree for eviction was refused. It was found that the defendant was not keeping good health and even according to him, he had been maintained by his son Anil who was staying with him and the trial Court took the view that the defendant could reside with his other son who was at Dombivali. It was urged before the trial Court that the landlord of the premises, that is, the owner of the premises had himself terminated the tenancy of plaintiff No. 1 and therefore, the present plaintiffs had no right or interest left in the premises which would enable him to file a suit for eviction against the petitioner. This contention was negatived by the trial Court. The petitioner filed an appeal before the Appeal Bench of the Small Cause Court at Bombay. The Appeal Bench confirmed the findings recorded by the trial Court and dismissed the appeal. This petition is now filed by the petitioner challenging the decree for eviction.

4. At the outset, the learned Counsel appearing on behalf of the petitioner has raised a question of law which does not seem to have been canvassed before the Appeal Bench but was raised before the trial Court with regard to the maintainability of the suit. The contention is that the landlord of plaintiff No. 1 has terminated the tenancy of plaintiff No in respect of the suit premises; the plaintiff, therefore, has no interest left in the suit premises; the plaintiff being a statutory tenant, the only right which the Rent Act gave to him was the right to protect his possession but that since the plaintiff was already out of possession, he could claim no further right under the Act and consequently he was not covered by the definition of ' landlord' in Section 5 (3) of the Rent Act so as to enable him to sue or recover back possession from the petitioner. It was vehemently stressed that all that is protected in the case of a statutory tenant was the status of irremovability and since plaintiff No. 1 was himself not in possession, there was no further status available to him under the Act.

5. The contention which is raised by the learned Counsel for the petitioner requires consideration of the provisions of Section 15-A read with Section 14 (2) of the Rent Act and the definition of ' landlord' in Section 5 (3) of the Rent Act It is now well known that the effect of inserting Section 15-A in the Rent Act was that where there is a subsisting license in respect of premises which are not less than a room and the licensee is in possession of such premises on the 1st day of February 1973, the licensee is deemed to have become for the purposes of the Rent Act the tenant of the landlord in respect of premises or part thereof in his occupation. By the same Act, that is, Maharashtra Act, 17 of 1973, by which Section 15-A was added in the Rent Act, two simultaneous amendments at two other places came to be made. Sub-section (2) was added in

Section 14 and the newly added provision reads as follows :-

> " Where the interest of a licensor, who is a tenant of any premises is determined for any reason, the licensee, who by Section 15-A is deemed to be a tenant, shall subject to the provisions of this Act, be deemed to become the tenant of the landlord, on the terms and conditions of the agreement consistent with the provisions of this Act."

The other addition made by the same enactment, that is, Maharashtra Act 17 of 1973 is to be found in Section 5 (3) where the definition of landlord has been extended. The definition of ' landlord' now reads as follows :

> " ' Landlord' means any person who is for the time being, receiving or entitled to receive rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; further includes in respect of his sub-tenant, a tenant who has sub-let any premises; and also includes in respect of a licensee deemed to be a tenant by Section 15-A, the licensor who has given such license."

It is the underlined portion which has been added so as to include within the definition of the word ' landlord' the licensor who had given the license to the licensee who is now by Section 15-A deemed to be a tenant. If Section 14 (2) and Section 15-A are read in their proper perspective, it is apparent that they operate at different points of time. Section 15-A operates with effect from 1st day of February 1973 in respect of person who satisfies the conditions which are prescribed in Section 15-A. The conditions are that there must be a licensee, he must be in occupation of premises or any part thereof which is not less than a room and if he satisfies these conditions, then he is deemed to have become the tenant of the landlord. A fictional status is thus given to a licensee with effect from the 1st day of February 1973. Section 14 (2) operates only when the interest of the licensor is determined.

6. Now, what is contended by Mr. Bafna is that the ' landlord' referred to in Section 15-A is the landlord of the premises, that is, the owner of the premises in whom the right of reversion vests. The word ' landlord' has been defined in the Act in Section 5 (3). It is significant that the definition of landlord as it originally stood before it was amended by Maharashtra Act 17 of 1973 did not make any reference to the landlord of a licenses. It was only by amendment which was consequent upon the provisions of Section 15-A being introduced in the Rent Act that the concluding part of the definition was added in the definition of landlord. By this newly added inclusive part, express provision is made by the legislature to indicate who is the landlord in respect of a licensee deemed to be a tenant by Section 15-A. The newly added portion includes in respect of a licensee who is deemed to be a tenant by Section 15-A the licensor who has given such license. It is the licensor of the licensee, who is now given a fictional status, who has been

now included in the definition of landlord. This newly added provision, therefore, has reference only to the fictional status given to a licensee by the provision in Section 15-A. In view of this express provision where the licensor has been specifically included in the definition of a landlord by extending the definition, he alone will become the landlord for the purposes of Section 15-A. Apart from this clear indication in the definition of ' landlord' the enactment of Section 14 (2) also shows that the word ' landlord' in Section 15-A has no reference to the owner of the premises. Section 14 (2) provides that a licensee who is deemed to be a tenant by Section 15-A is to be deemed to have become the tenant of the landlord if the interest of the licensor who is a tenant of the premises is determined. Therefore, the condition precedent for the licensee who is deemed to be a tenant to get the status of a deemed tenant of the landlord referred to in Section 14 (2) is that the interest of the licensor of the licensee must be determined. Section 14 (2) also uses the word ' landlord' . It is obviously used here in a sense different from the sense in which it is used in Section 15-A. While Section 15-A deals with fictional status bestowed on a licensee and he is deemed to be a tenant of the licensor who is described as a landlord, Section 14 (2) creates a direct relationship between the owner of the premises and the licensee if the intervening interest of the tenant who was the licensor has been determined. Privity is, therefore, created by Section 14 (2) between the landlord, who for the purposes of Section 14 (2) is a person other than the one covered by the concluding portion of the definition of ' landlord' added by Maharashtra Act 17 of 1973, and the original licensee who has by the operation of Section 15-A been deemed to be a tenant of the licensor but is now deemed to be a tenant of the owner of the premises. It will, therefore, not be possible to construe the word ' landlord' in Section 15-A as referring to the owner of the premises in whom the right of reversion vests. There is thus no difficulty in holding that even in a case where a licensee invoking the provisions of Section 15-A claims to have become a tenant, his landlord is not the owner of the premises but his landlord is his licensor alone.

7. The next question which, therefore, arises is whether such a licensor who is now included in the definition of landlord is prevented from filing a suit for eviction against the licensee who is deemed to be his tenant. Apparently there is nothing in any of the provisions which can indicate that the licensor, who is a landlord vis-a-vis a person, who is deemed to be a tenant, cannot invoke the provisions of Section 12 or Section 13 of the Rent Act. What is, however, contended by Mr. Bafna is that it has been held in a decision of this Court in *Devji Keshavji and Co. v. Dahibai*[1], that though the word ' landlord' includes a person who is receiving or is entitled to receive rent, having regard to the words of Section 5 (3), it is clear in the case of derivative title from the landlord, a tenant of the landlord would not be a landlord in relation to a sitting tenant who is direct tenant of the landlord at least for all purposes as long as the Rent Act continues, and for the purposes of Sections 12 and 13, the ' landlord' means the person in whom the reversion is vested and not merely a right of possession of the premises as a tenant. The decision in Devji Keshavji' s case is clearly distinguishable on facts. The facts of that case would show that the tenant of the premises had sublet those premises to two persons. The petitioner was one of those two sub-tenants and the other one was respondent No. 2. The owner of the premises, respondent No. 1 filed an ejectment suit against the tenant. The petitioner who was a sub-tenant was a party

to the suit. A decree was passed against the tenant, but the suit was dismissed against the petitioner because the landlord agreed to recognize the petitioner as direct tenant of the entire godown. Respondent No. 2 who was another sub-tenant had become a direct tenant of the landlord under Section 14 of the Bombay Rent Act. The petitioner who had obtained a direct lease from the landlord demanded rent from respondent No. 2 who had become a direct tenant by virtue of Section 14. The petitioner, therefore, terminated the tenancy of respondent No. 2 and filed a suit for ejectment. Respondent No. 2 through its sole surviving partner, respondent No. 3, filed a declaratory suit against the petitioner and the owner of the premises for a declaration that the respondent No. 2 was a tenant of respondent No. 1 and they were liable to pay rent only to respondent No. 1 and the petitioner has no right to eject them. The suit came to be dismissed by the trial Court. In appeal the Appellate Bench held that respondents Nos. 2 and 3 were the direct tenants of respondent No. 1 and that the petitioner had not become their landlord. The petitioner, therefore, filed a petition under

[1] AIR 1971 Bom 285

Article 227 of the Constitution in which the question raised was whether by reason of the lease for a year, the petitioner became the landlord of respondents Nos. 2 and 3. It was on these facts that Patel J. took the view that in the case of a derivative title from the landlord, the tenant of the landlord would not be for all purposes in relation to a sitting tenant a direct tenant of the landlord. The learned Judge further observed that for the purpose of Sections 12 and 13 the ' landlord' means a person in whom the reversion is vested and not merely a right to the possession of the premises as a tenant. The decision will thus show that what the Court was called upon to decide in that case was whether a person who claimed to be a tenant of the entire premises by virtue of a lease from the landlord could claim possession from a person who had by virtue of the provisions of Section 14 (1) become direct tenant of the landlord. The observations made by the learned Judge must, therefore, be read in the light of the facts before him.

8. It must also be noticed that the concluding part of the definition which came to be introduced in 1973 did not fall for consideration before the learned Judge. Once the licensor of the licensee who claims to have become a deemed tenant by virtue of the provisions of Section 15-A is included in the definition of landlord, it is difficult to see why as between the licensor and the licensee the right of reversion did not vest in the licensor. By virtue of the definition of ' landlord' the licensor would be entitled to invoke the provisions relating to the recovery of possession of the licensee. Assuming for a moment that the landlord had himself filed a suit for ejectment of the plaintiff, it is difficult to see how that suit would affect the right of the plaintiff vis-a-vis his deemed tenant who was the original licensee. As already pointed out, Section 14 (2) does not operate so as to make the licensee, who is deemed to be a tenant of the licensor, a deemed tenant of the landlord, namely, the owner of the premises unless the interest of the licensor is determined. If the licensor vis-a-vis the original owner is in his capacity of a tenant a contractual tenant, mere termination of his lease does not terminate his interest in the premises. He is entitled to remain in possession. In spite of the fact that in the case of a licensor referred to in Section 14 (2) possession would not be with him and it would be with the licensee, the legislature has still

provided that the rights of the licensee *qua* the original landlord, that is, the owner of the premises would change into one of deemed tenancy only if the interest of the licensor is determined. The scheme of Section 14 (1) and Section 14 (2) is identical except that while Section 14 (1) provides for the protected sub-tenant becoming a direct tenant of the landlord, Section 14 (2) provides for a protected licensee becoming a deemed tenant of the landlord. In one case, it is the interest of the tenant which has to be determined, in the other case also it is the interest of the tenant who is described as a licensor which is to be determined.

9. Section 14 (1) fell for consideration before the Supreme Court in *Hiralal v. Kasturbhai*[2], and the words " is determined for any reason" were construed by the Supreme Court as follows (at p. 1856) :-

> " The words ' is determined for any reason' in the context of the Act mean that where the interest of a tenant comes to an end completely, the pre- existing subtenant may, if the conditions of Section 14 are satisfied be deemed to be a tenant of the landlord. The interest of a tenant who for purposes of Section 14 is a contractual tenant comes to an end completely only when he is not only no longer

[1] AIR 1967 SC 1853

> a contractual tenant but also when he has lost the right to remain in possession which Section 12 has given to him and is no longer even a statutory tenant. In other words Section 14 would come into play in favor of the sub-tenant only after the tenancy of the contractual tenant has been determined by notice and the contractual tenant has been ordered to be ejected under Section 28 on any of the grounds in Section 12 or Section 13. Till that event happens or till he gives up the tenancy himself the interest of a tenant who may be a contractual tenant, for purposes of Section 14, cannot be said to have determined i. e. come to an end completely in order to give rise to a tenancy between the preexisting sub- tenant and the landlord."

Thus in the context of Section 14 (1) the Supreme Court has held that the interest of a contractual tenant is for the purposes of Section 14 determined only when after the termination of his tenancy he has been ordered to be ejected under Section 28 on any of the grounds in Section 12 or Section 13. The same principle will, in my view, apply for the purposes of construction of Section 14 (2). The interest of a licensor who is a tenant of the premises is required to be determined before the licensee can claim to have become a direct tenant of the landlord. The interest cannot be said to be determined even for the purposes of Section 14 (2) unless there is a decree for eviction of the tenant. It is only when there is a decree for eviction of a tenant that an occasion for the protected licensee under Section 15-A to claim the status of a tenant of the landlord of the premises would arise. There is thus indication in Section 14 (2) itself that the interest of the tenant or the licensor continues till there is a decree for eviction. It will not, therefore, be possible to accept the argument that merely because the licensor was not in possession of the premises, all his interest in the premises had ceased and that he was not entitled

to sue his licensee for restoration of possession. It is not, therefore, possible to accept the argument that the suit filed by plaintiff No. 1 was misconceived.

10. The learned Counsel then wanted to raise the questions with regard to the validity of notice and the hardship. It is well known that even a notice under Section 106 of the Transfer of Property Act has to be liberally construed. The notice in question clearly asked the petitioner to deliver possession. This notice has been held to be valid as terminating the deemed tenancy. I see no reason to take a different view, especially when the notice has not been produced in this petition.

11. On the question of hardship again, the finding is one of fact where both the Courts have held that there is no independent evidence to show that the petitioner is not on cordial relations with his son with whom, according to the Courts, it was open to him to go and stay.

12. These were the only questions which were argued before me. In the view which I have taken this petition must fail and is dismissed with costs.
Petition dismissed.