(2002) 12 SC CK 0057

Supreme Court of India

Case No: Civil Appeal No. 4659 of 1997

Feroze N. Dotivalaq		APPELLANT
	Vs	
P.M. Wadhwani and Others		RESPONDENT

Date of Decision: Dec. 3, 2002

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 15, 15(1), 15A, 5(6A)

Citation: (2002) 10 JT 105 : (2003) 4 MhLj 126 : (2003) 1 SCC 433

Hon'ble Judges: R. C. Lahoti, J; Brijesh Kumar, J

Bench: Division Bench

Advocate: R.F. Hariman, Harish N. Salve, Kailash Vasdev and Bhimrao Naik, Gaurab Banerjee, Nandini Gore, Manik Karanjawala, V.D. Khanna, S.V. Deshpande and Naresh Kumar, for the appearing partie, for the Appellant;

Final Decision: Allowed

Judgement

Brijesh Kumar, J.
An advertisement was published in the Times of India dated 5.10.1999: it read as follows:

"Accommodation available for two rooms self-contained apartment with sea-view, telephone optional, ideal for executives, couples, reasonable terms".

2. The appellant before us, namely, Feroze N. Dotivalaq approached the respondent namely, Wadhwanis in response to the above noted advertisement and he was given the accommodation on payment of certain amount as compensation for the same. The moot question that falls for consideration in this appeal is about the nature of occupation of the premises as to whether the appellant is a "licensee" or a "paying guest" in the light of the relevant provisions under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Act").

3. According to the appellant, in the year 1975 after the death of the mother of the respondent No. 1, he wanted the appellant to give in writing that he was occupying the premises as a paying guest. The appellant did not accede to the request made. This gave rise for the appellant to file a suit for declaration, namely, Suit No. 2365 of 1975 in the Small Causes Court, Bombay for a decree in his favour that he be declared as a deemed tenant of the accommodation and an injunction was also prayed against the defendant respondents to the effect that they would not disturb his possession over the premises in question. The suit was decreed. The appeal filed before the Division Bench of the Small Causes Court was dismissed. A Writ petition, however, preferred by the respondent has been allowed by the High Court holding that the appellant before us is a "paying guest". Hence, this appeal against the judgment and order of the High Court.

4. The trial court while decreeing the suit recorded a finding that the plaintiff, namely, the appellant before us, with his family, is separately residing in the apartment which is self-contained whereas the defendants are residing in the other portion of the terrace flat. While dealing with the facts of the case it was also held by the trial court that there was nothing to indicate that the defendants retained control or dominance over the premises given to the plaintiff nor it would be conceivable that defendants would agree to suffer unity of residence with the plaintiff. The language used in the advertisement has also been taken into consideration to rule out the plea of the respondent that the appellant was a paying guest. The trial court, however, denied the relief sought for use of the terrace, which also he claimed to be in his tenancy, adjacent to his premises in corner of which one Shri Ajhwani lived in a room. The case of the defendant regarding common use of certain parts of the accommodation was not accepted. The appellate court while dismissing the appeal made reference to the English Law on the subject and on the basis of the same observed that the licensor must retain general control over the premises given to a person as a paying guest. He should also be a dominant occupier with the paying guest in subordinate occupation of the premises. The appellate court has also observed that the draftsmen of the definition in the Bombay Rent Act appeared to have followed the English legal position and then it observes: "Apart from all that the term "part of the premises in which the licensor resides" used in the definition would mean either that the licensor is in joint occupation of the premises along with the paying guest or that his residence in the premises is so close to the residence of the paying guest that a stranger may feel their residence as joint". The requirement of unity of residence for a paying guest as held by the trial court has also been approved by the appellate court. It was found that the appellant was in exclusive possession and use of the premises, hence he was not a paying guest. The High Court, however, has taken a different view on the basis of a division bench decision of the Bombay High Court reported in the Bombay Law Reporter Vol. LXXVIII-1976 page 704, Sarfarzall Nawaball Mirza v. Miss Maneck G. Burioril Reporter , wherein it has been held that a "paying guest" means one who is not a member of the family and is in possession of a part of the entire premises in possession of the licensor.

5. So far the description of the premises is concerned there is no dispute that it is on the fourth floor and after getting down from the lift there is only one main door which opens into passage and major part of the accommodation consisting of three bedrooms etc. is in occupation of the licensor and on the left hand side one bedroom, kitchen and bathroom is in occupation of the appellant. Each of the two have doors leading to their premises. While leading to the accommodation in the possession of the appellant there falls a servant quarter and an urinal in possession of the licensor. In the corner of the terrace on the side of the appellant there is a room which has been in occupation of one Shri Ajhwani. In respect of the terrace the appellant had prayed for a relief that it was also in his use and a part of his tenancy but this relief has been refused. It also transpired that the terrace also leads to one of the bedrooms in occupation of the licensor according to the map filed by him. Before we proceed further we may peruse the definition or different terms as defined under the Bombay Rent Act.

"5. In this Act unless there is anything repugnant to the subject or context,-

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(4A) "licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together,.....

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(6A) "paying guest" means a person not being a member of the family, who is given a part of the premises, in which the licensor resides, on licence;

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(8) "premises" means-

(a) any land not being used for agricultural purposes;

(b) any building or part of a [building let or given or licence separately] (other than a farm building) including-

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house;

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15A. (1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or any in contract, where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.

(2) The provisions of Sub-section (1) shall not effect in any manner the operation of Sub-section (a) of Section 15 after the date of aforesaid.]"

6. A perusal of the definition of the terms indicated above shows that licensee is one who is in occupation of the premises or a part thereof under any subsisting agreement or licence but this definition specifically excludes "paying guest" who but for this exclusion otherwise would also have been covered by the said definition. The "paying guest" in turn is defined as means a person :(1) who is not a member of the family; (2) is a given a part of the premises; (3) in which the licensor resides. A "premises" also means a part of a building given separately. As provided u/s 15A a person who may be in occupation of any premises on February 1, 1973 which is not less than a room, as a licensee, shall be deemed to have become a tenant of tat premises. The appellant has acquired the status of a deemed tenant u/s 15A or not will be dependent upon the fact as to whether he is to be treated as a "licensee" or a "paying guest".

7. The three ingredients of the expression "paying guest", as defined, have been indicated above. If the three conditions are fulfilled i.e. the person concerned is not a member of the family; but has been given a part of the premises in which the licensor resides, under the law, it would mean that such a person is a paying guest. Nothing more is required or envisaged in the meaning of the word "paying guest". The trial court and the appellate court have imported the ingredients of a unity of a residence in the premises with the licensor and dominion and superior kind of possession of the licensor over the subordinate nature of occupation of a paying guest. The appellate court has specifically considered the meaning of the expression "paying guest" as under the English Law and cited decisions on the point considering the meaning of the word "lodger". In connection thereof it has been found that joint occupation and unity of residence would be one or the ingredients or a "lodger" which has been applied to a "paying guest" under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In our view it may not be wise to import the meaning and attributes of the term "lodger" as prevalent under the English law to ascertain the meaning of "paying guest" which is specifically defined under the Act.

It is not possible to add to what has been already defined by the Legislature for the purposes of a particular enactment dealing with a particular kind of situation, it envisages to meet. In our view the trial court and the appellant court mis-directed themselves by being guided by the meaning of the word "lodger" as prevalent under the English law. A defined term under a particular statute has its own scope and limits. We need not emphasise that even two similar terms may not mean the same thing if defined in two different enactments in their own context. The meaning of the word "paying guest" in general may be anything; but for the purposes of the particular enactment its meaning and ingredients cannot be expanded or subtracted. therefore finding out the meaning of the word "paying guest" depending upon the ingredients of unity of residence and control or dominion over the premises given, as relevant for the purposes of "lodger" under the English law was not a correct approach. More so, when there is no ambiguity in the definition of "paying guest" as defined under the Act. All that was to be examined was as to whether in the given facts of the present case the three ingredients of the term "paying guest" are fulfilled or not. Undisputedly, the appellant is not a relation of the respondents. He has been given a part of the premises in which the licensor resides. The requirement of the term "paying guest" as defined under the Act is fulfilled. The paying guest enjoys the possession exclusively and separately is not material so long the premises in his occupation is a part of the larger premises in which licensor resides. The finding of all the courts is to the effect that the premises in occupation of the appellant is only a part of the one whole premises. It will be beneficial to look to such findings recorded by the courts. The trial court in the discussion under the heading "reasons" observed thus:

".....the premises in suit are admittedly a part and parcel of the entire terrace flat of which the defendants are tenants. There is no dispute on the point that in the other apartment viz. that in use of defendants, they are living with their family".

At another place in paragraph 21 of the judgment the trial court found as follows:

".....the premises given to the plaintiff under the agreement of October 1969, are separate from the premises used and occupied by the defendants though the two form part and parcel of one common terrace flat."

8. The appellate court while considering the case of the defendant licensor that there are certain parts of premises which case has not been accepted, but it has been observed as follows at one place:

"...similarly, the fact that there is only main entrance to the entire flat also is not very significant. Because it is in evidence that appellants as well as the respondent can open & lock this door independently."

9. From the above findings and observations it is clear that basically it is one terrace flat and one premises with only one entrance, a part of which has been given to the appellant by the licensor who occupies the remaining part of the whole terrace flat. The finding to

the effect that the part given to the appellant is in his exclusive use and separate would be of no consequence so long it is a part of the whole premises. It is not necessary to go into those details which have been pointed out by the learned counsel for the respondent to show that certain parts of premises have been in joint use since in our view that will not be a very relevant consideration. The joint use may or may not be there. It is sufficient if the premises given, is a part of the whole premises remaining of which is in occupation of the landlord.

10. We feel that in view of the definition of the word "paying guest" as defined under the Act it would be more appropriate to examine as to whether the whole premises can be used as one, including, which is given to the person for occupation along with the remaining part in occupation of the landlord or not. The fact that a part of the premises is used exclusively by another would not be relevant. On the other hand what would be relevant would be if the premises could be used as one after part of it given to another person is included by the landlord as one unit for his own use. In the present case the whole premises has one door to enter into it. The finding of the trial court and the appellate court is also to the effect that the two apartments or premises are part and parcel of the one and the same terrace flat.

11. It appears that the Legislature only intended that in cases where landlord residing in a premises, parts with possession of a part of it, it would always be open to him to regain the possession of the whole as and when the licensor may so deem necessary. The question of acquiring common lease right by a person not a member of the family may not arise. This is a plain and simple meaning flowing from the definition of the word "paying guest" under the Act. Introducing any other element or ingredient to give meaning to the word "paying guest" as may be prevalent under any other law or under English law will be doing violence to the definition of the word "paying guest" as defined under the Act.

12. Certain decisions have been referred to by the learned counsel for the appellant, namely, one reported in 1990 (1) Rent Control Reporter page 470, Miss Dinoo V. Byramji v. Mrs. Dolly J. Jahangir Ranji . The Bombay High Court in this case has held the occupier to be a "paying guest", but the agreement itself provided that the occupant shall not have any exclusive right to the use and occupy the room. The meaning of the word "lodger" under the English law has also been referred to and it was observed that retention of control by the licensor is the determinative factor. But on facts of the facts of the case of its own it was held to be a case of a "paying guest". One of the decisions referred to in the above noted decision namely, Kent v. Fittall reported in 1911 Law Reports Kings Bench Division, Vol. 2 page 1102 would also not be very relevant as we are concerned with the word "paying guest" as defined under the Act. Same is the position in regard to the decision reported in 1948 Vol. 2 All England Law Reports 1948 pages 588, Helman v. Horsham. In that case the court was considering the meaning of the word "lodger" as assigned in context with the provisions of the statutes under consideration and the English law on the point. It had also referred to the decision in 299814 , Surendra Kumar Jain v. Royce Pereira. Apart from other facts there was an

admission that he person was occupying the premises as a paying guest. It was also found as fact that one of the bedrooms could be reached only passing through the accommodation with the occupier but besides these facts the observations relevant for the purpose of this case are:

"In our opinion all that is required to make a licensee answer the description of a "paying guest" is that the licensor also "resides" in the premises of which a part is in the possession of the paying guest and it is not required that the licensor should physically reside in the same room as the paying guest. The words "in which the licensor resides" qualify the words "premises", which immediately precede the said words and are not intended to qualify "part of the premises" as wrongly assumed by the trial court."

It appears that the occupier and the licensor were residing on two different floors. Then too it was observed in para 15 as under:

"It was argued for the appellant that been if the words "premises, in which the licensor resides" would not mean the very room, still the licensor must be using the remaining part of the premises for actual residence and that in this case, the remaining portion of the ground floor was not so occupied for residence because the owner was living in the first floor. In our view, this contention cannot be accepted. If the ground floor and the first floor of this building are to be treated as "premises" then the occupation of the owner of the first floor for "residence" would satisfy the requirement of Section 5(6-A)."

Otherwise also on facts the occupier was held to be a paying guest.

13. The Legislature, while defining a word or a term, ie fully competent even to assign an artificial meaning to the word (see 291630). It can also restrict the meaning of a word by defining it in that manner. Generally, when definition of a word begins with "means" it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself. There can also be extensive definitions when the definition starts with "includes". This Court, in the case 285204 observed at page 1400:

"A particular expression is often defined by the Legislature by using the word "means" or the word ''includes''. Sometimes the words ''mean and includes'' are used. The use of the word "means" indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition." (See Gough v. Gough (1891) 2 QB 665; 270444 ".

A reference may also be made to Inland Revenue Commissioner v. Joiner (1975) 3 All ELR 1050 (HL).

14. Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word

which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined. No such compelling reason has been indicated to us by reason of which some more ingredients may be read in the term "paying guest", other than which simply flow from the definition as provided. In the case in hand the definition of the word "paying guest" begins with "it means". It is to be read and understood in the manner defined. There would be no justification to expand or to further restrict it by including or super-imposing some ingredients or elements which otherwise do not admit of such inclusion and to give a different colour and meaning to the defined word. A person answering the description of "paying guest" in accordance with Section 5(6A) of the Act is to be treated as such without requiring fulfillment of any other condition.

15. Learned counsel for the appellant submitted that the learned single Judge erred in following the decision in the case of Sarfarzali (supra) since the point in question was not directly involved and the division bench had made observations in a passing way. Even if that be so, in our view, the division bench was right in making those observations as followed by the learned single Judge.

16. We, therefore, find no infirmity in the orders passed by the High Court. The appeal is, therefore, dismissed devoid of any force. However, considering the fact that the appellant is in occupation of premises since a long time we allow him six months time to handover vacant possession of the premises to the respondents on furnishing usual undertaking to that effect in this court within a period of four weeks from today.

Costs easy.