

(1999) 03 BOM CK 0112

Bombay High Court

Case No: Writ Petition No. 3694 along with W. P. No. 6164 of 1996

Dr. Surinder P.S. Pruthi and
another

APPELLANT

Vs

Commandors B.Y. Wad and
others

RESPONDENT

Date of Decision: March 10, 1999

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13
- Easements Act, 1882 - Section 52
- Presidency Small Cause Courts Act, 1882 - Section 18(3), 28, 41

Citation: (1999) 3 BomCR 371 : (1999) 2 MhLj 532

Hon'ble Judges: T.K. Chandrashekhara Das, J

Bench: Single Bench

Advocate: Pravin Shah, S.G. Vakil and K.S. Vakil, for the Appellant; S.G. Vakil, K.S. Vakil and P.N. Shah, for the Respondent

Judgement

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T.K. Chandrashekhara Das, J.

The petitioner in Writ Petition No. 3694 of 1996 Dr. Surinder P.S. Pruthi has filed a suit before the Small Causes Court, Bombay as Suit No. R.A. Suit No. 2142 of 1975 against 1) Commr. B.Y. Wad and 2) M/s. Rallis India Ltd. for declaration that he is tenant in respect of 8-A, 8th Floor, Oyster Apartment, Sadashiv Park, Pilot Bunder Road, Colaba, Bombay 5 (hereinafter referred to as "the declaratory suit"). The suit was dismissed by the Small Causes Court, Bombay. Commr. B.Y. Wad who is the petitioner in W.P. 6164 of 1996 filed suit against M/s. Rallis India Ltd. and Dr. Surinder P.S. Pruthi for recovery of possession of the aforesaid flat in view of section 13(1)(A) of the Bombay Rent Act (hereinafter called as "suit for possession") as Suit No. 134/789/76. Both the suits were jointly tried by the Court of Small Causes,

Bombay and dismissed the suits. Against this, both Dr. Pruthi and Commr. Wad filed appeals before the Appellate Bench of the Small Causes Court. The appeal filed by Dr. Pruthi was numbered as Appeal No. 596 of 1986 and appeal filed by Commr. Wad was numbered as Appeal No. 583 of 1986. Though both the appeals were heard by the appellate Court together, separate judgements were passed by the appellate Court dismissing both the appeals. In these circumstances, the unsuccessful appellants filed the above two writ petitions challenging the above orders passed by the courts below.

2. In both the suits, M/s. Rallis India was impleaded as defendant. The suit for possession was filed on the ground that the suit flat was given on leave and licence to the 1st defendant M/s. Rallis India Ltd. by an agreement dated 21-2-1969 with clause of three extensions of 11 months each. On expiry of that period, namely 33 months, another agreement was executed between the parties with similar conditions and nature for a period of another 33 months. The term of licence was thus to expire on December, 1974. Plaintiff filed suit for possession against both the defendants on the ground that he requires the flat for his own occupation by virtue of section 13-A1 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to for short as "Bombay Rent Act"). The plaintiff in the declaratory suit on the other hand stated that though the licence agreement was executed between Commr. Wad, defendant No. 1 and M/s. Rallis India defendant No. 2, it is exclusively for him and he is in possession of the suit flat and after the termination of the licence i.e. 16-7-1974, the date on which licence of agreement came to be terminated by the 1st defendant Rallis India Ltd. he continued to be in occupation of the flat and therefore, he deemed to be the tenant of Commr. B.Y. Wad.

3. Both the courts below rejected the contention for the respective plaintiffs on facts and normally in such circumstances, this Court can, without going into further details, dispose of the writ petitions, on that ground alone. But as both the Counsel appearing on behalf of the petitioners have strenuously argued and attacked both the judgments of the Lower Courts raising various issues, it is necessary for me to refer to certain arguments advanced by the Counsel for the petitioners.

4. Let us first examine the argument of the learned Counsel Mr. Vakil who appears for the petitioner in W.P. No. 6164 of 1996. As I indicated earlier, he attacked the Lower Courts judgement being illegal on the ground that so long as M/s. Rallis India was the tenant and Dr. Pruthi being the employee of the Rallis India continued to occupy the flat and Commr. Wad is retired officer of the Navy and he has obtained certificate contemplated u/s 13-A(2) issued by the authorised officer that he is member of the Armed Forces of Union of India and he retired as such and he do not possess any suitable alternative accommodation in the local area, he is entitled to get possession of the premises. The courts below concurrently found that he is retired in 1970 and the Leave and Licence would mature into the tenancy by

deeming provisions of section 15-A of the Rent Act by Amendment dated 1st February 1973, it has to be construed that the tenancy was created after his retirement no right u/s 13(1)(a) can be exercised. The Court also found on facts that Commr. Wad is actually having alternative accommodation and he does not require the building bona fide. In view of the factual back ground, it has to be considered that the Leave and Licence, which was originally executed by M/s. Rallis India Ltd, with the landlord has been terminated by them and the Lower Court has come to the conclusion that the Leave and Licence has been terminated and no tenancy subsists between the tenant and the landlord. Unless there is relationship between the landlord and tenant, provisions of the Small Causes Court Act, cannot be pressed into service. In this context, Mr. Vakil, learned Counsel for the petitioner in W.P. No. 6164 submits that M/s. Rallis India was tenant and said Mr. Pruthi is only agent of Rallis as he is possessing the flat under them, he is not entitled to decree for declaration by the Lower Courts. We have to examine this point assuming that the case u/s 13-A1 put up by the plaintiff is proved.

5. The agreement dated 21-2-1969 entered into between M/s. Rallis India and Commr. Wad, clause (c) thereof clearly states that the premises is taken for the occupation of the employees of the Rallis and it has shown that presently it is occupied by Dr. Pruthi. Therefore, learned Counsel for the petitioner in Writ Petition No. 6164 of 1996 submits that Dr. Pruthi is occupying the flat for Rallis India and the suit for eviction is maintainable against both defendants.

6. Now we have to examine the contention of Mr. Shah, Counsel appearing for the petitioner in Writ Petition No. 3694 of 1998. He contends that going by the clauses of the agreement executed by Rallis India Ltd. it has to be construed that it is virtually for Dr. Pruthi. The learned Counsel drew my attention to the fact that the landlord has been advertising in newspaper that he requires a tenant for his flat and that with reference to that advertisement one Broker negotiated the terms between Dr. Pruthi and Commr. Wad and Commr. Wad was very well aware that it is for Dr. Pruthi. Since the landlord has insisted that he is prepared to execute the licence agreement only with a company and therefore, M/s. Rallis India was only named in and Clause (c) which specifically says that it is for Dr. Pruthi. So he contended that from the very beginning of the licence, he was occupying the flat as a licensee. Therefore, he is deemed to be tenant from 1-2-1973 when section 15-A came into existence. He further contended that the landlord is not entitled to the benefit because the actual tenancy is deemed to have been created only with effect from 1-2-1973 i.e. long after the retirement of the landlord Commr. Wad. Therefore, the landlord cannot avail of the benefits of section 13-A1 of the Bombay Rent Act. Moreover, he contended that the Lower Court has found that the landlord came with an eviction suit only after 13-A1 brought in the statute. Therefore, there is oblique motive to evict the tenant and in that circumstances as required u/s 13-A1, the bona fide requirement of the flat has not been established by the landlord. In that circumstances, it is contended that both the courts below was wrong in

dismissing the suit for declaration.

7. In this background of the diametrically opposite contentions of the parties, the landlord says that M/s. Rallis India Ltd. is his tenant and Dr. Pruthi is only an agent of M/s. Rallis India Ltd. and the suit for eviction is maintainable even against the ex-tenant. In this context, one more fact is more relevant to be noted that by a letter dated 16-7-1974 M/s. Rallis India has written to the landlord terminating the licence and asked the landlord to transact directly with Dr. Pruthi if they so desire. Therefore, the landlord did not recognize Dr. Pruthi as licensee or tenant. We have to examine the legal implications of the contentions raised by both sides. The licence came to be terminated on 6-7-1974, which is not disputed. Then what is the status of Dr. Pruthi on that day. According to Mr. Vakil, assuming that on 16-7-1974 the tenancy was terminated, it is the duty of M/s. Rallis India Ltd. to give back the possession of the building to the landlord and Dr. Pruthi became the trespasser from that day onwards. Even in that context, Mr. Vakil argues that suit for eviction is maintainable against ex-tenant. He also cited decision of the learned Single Judge of this Court in [C.K. Talwar Vs. M/s. Rallis India Ltd.](#), . In that decision, in para 7, the learned Judge has observed :

"In this case, however, the petitioner preferred to remain in possession and enjoy the use and occupation of the premises free of charges, whereas the rightful occupant, namely the company, was on the one hand deprived of the premises and on the other continues to pay the rent and outgoings for the same on behalf of the petitioner ex-employee with whom the company virtually has nothing to do. What emerges, however, from a perusal of the agreement is that the company did confer on the employee officer a licence which was of a temporary duration and which was revoked at will, and which did not create any rights whatsoever in the petitioner as far as the premises were concerned. The record further shows that on termination of that licence, i.e. on 28-6-1988, that the petitioner refused to restore possession of the premises. On and from that date, therefore, the petitioner is right in contending that he is no longer a licensee of the company which, in its turn, was not, therefore, unjustified in styling him as a trespasser in the plaint. One cannot view the status mentioned in isolation of the totality of the cause of action while considering the arguments canvassed by Mr. Jethmalani. Cases of this type will have to be distinguished from situations wherein the adverse party has illegally and unlawfully entered into the premises either by force or clandestinely, i.e. where there was no licence conferred at any earlier point of time and situations of the present type where admittedly the licence was once in existence and was terminated. Indeed, in every proceeding u/s 41 of the Presidency Small Cause Courts Act, the cause of action arises only after such termination and on the refusal to restore possession and the defendant to such proceeding, therefore, though styled as a trespasser is, in fact, an ex-licensee or a licensee who is holding over. This distinction is material because the fallacy in the arguments canvassed by Mr. Jethmalani would thereby be apparent."

8. This judgment will not render any help to fortify the contentions of the learned Counsel Mr. Vakil. There the suit is filed by M/s Rallis India Ltd. against its ex-employee who was employed by the plaintiff to occupy its tenanted residential premises while he was in service. Under the agreement between the employer and employee no right of sub-tenancy or tenancy can be created in favour of the employee except a right to reside in the premises as conditions of his service. The moment employer terminates the employment of the employee, the employee becomes trespasser. But still Court held that he is an ex-tenant and the suit will lie u/s 41 of the Small Causes Court Act, as the cause of action only arises after such termination and refusal to reside in the premises. On facts this case can very well be distinguishable. Secondly, the proposition laid down in that decision is doubtful one as once the occupant is termed as trespasser, how could he be said to have any jural relationship with the landlord even for the purpose of Rent Act. For all purposes he must be treated as trespasser alone and no jural relationship can be attributed between the landlord and the occupier. In our case the landlord filed suit, whereas in the above case, the employer wanted to vacate his ex-employee. Therefore, the aforesaid decision cannot be pressed into service to support the case of the landlord. Counsel also brought another decision of the Supreme Court in [Importers and Manufacturers Ltd. Vs. Pheroze Framroze Taraporewala and Others](#). In this case, the landlord brings a suit for possession and for rent against his tenant after giving a notice to quit and also implead therein a sub-tenant to whom the premises were illegally sublet by the tenant and it is held that the suit will lie against him u/s 28 of the Small Cause Court Act. This also will not be of the any help to the facts of this case because in that case the tenancy is admitted. Herein in our case, the tenancy was not admitted. In admitted tenancy and on termination of such tenancy, the suit filed u/s 28 of the Small Cause Courts Act, would lie before the Small Cause Court. He further cited the another decision in [Sushila Kashinath Dhonde and Others Vs. Harilal Govindji Bhogani and Others](#). It is the case where the suit was filed for recovery of the amount advanced to the landlord for construction of the building. It was agreed that after construction, building will be given to the plaintiff. On failure to hand over the possession, the suit was filed for realisation of that amount paid before Small Cause Court. The objection raised in that suit was that the suit will not be maintainable in the Small Causes Court because in such nature, only the City Civil Court had jurisdiction. The Supreme Court held that in order to maintain the suit u/s 28, before the Small Causes Court that Small Causes Court has got jurisdiction because the dispute arises out of the payment contemplated u/s 18(3) of the Small Causes Court Act. It is profitable to extract the observations of the Supreme Court made in para 24 of the Judgment:

"A perusal of the various clauses of the agreement, referred to above, clearly shows that the loan given by the first respondent to respondents 2 to 5 was for the purpose of financing the erection of the building on the land in question held by the landlords as owners and that the agreement was in writing and has been registered.

It also includes the various conditions referred to in section 18(3). Therefore, it is clear that the arrangement by way of an advance of the construction loan and the conditions imposed therein and the manner in which the deed of charge has been executed are in accordance with section 18(3) of the Act and the arrangement is a permissible one under the said sub-section. But for the type of arrangement entered into in accordance with section 18(3), it is clear that any other payment of the types of amounts mentioned in section 18(1) is not permissible."

The observations made by the Supreme Court in paragraph 26 and 27 which extracted below will make it amply clear that it is payment made in pursuance of section 18(3) and therefore, the suit will lie under the Small Causes Court Act.

"26 Having due regard to the nature of the transaction entered into between the parties, viz, the deed of charge dated August 12, 1959, and the provisions of section 18(3) read with section 28 of the Act, we are of opinion that the subject-matter of the proceedings initiated by the plaintiff relates to claims or questions arising out of the Act. The question regarding the nature of the transaction, whether it is saved by section 18(3) of the Act, and the nature of the reliefs to be granted to the plaintiff are all claims or questions arising out of the Act and can be dealt with only by the Special Court constituted u/s 28 of the Act. No doubt the deed of charge furnishes the cause of action, but its legality, validity and binding nature and other incidental matters connected therewith are all questions arising out of the Act.

27. Further we are not inclined to accept the contention of Mr. Hattangadi that the rights of the plaintiff flow not from the Act or any of its provisions but from the contract, namely the deed of charge. The registered agreement entered into between the parties regarding the construction loan, it must be pointed out is the method contemplated by section 18(3) of the Act. The payment made by the plaintiff under such an agreement is, in our view, an advance of a construction loan by the plaintiff in accordance with the Act, and the relief for a charge as well as for the recovery of the amount are all claims arising out of the Act. In fact the claim made by the plaintiff in the suit could never have arisen and the transaction in question could not have taken place but for the Act."

9. Therefore, in the factual matrix of the aforesaid decision, the contention of the Counsel for the landlord Mr. Wad, is quite distinguishable and are of no help to the plaintiff in the eviction suit. In this case we have an agreement with M/s. Rallis and they have terminated the same on 16-7-1974 and Dr. Pruthi has to be treated only as trespasser and the suit will not lie in the Small Cause Court for recovery of the possession of the flat. While terminating the licence M/s. Rallis India Ltd. has specifically told his landlord that if they want, they can directly transact with Dr. Pruthi. But the landlord insisted that it can be given only to a company. Dr. Pruthi was never recognised as a licensee.

10. This aspect has to be considered in another angle which is argued by Mr. Shah, learned Counsel for Dr. Pruthi. He tried to argue that after the termination of the leave and licence by M/S. Rallis with the landlord, the licence continues because Dr. Pruthi is in possession. Therefore, for all practical purposes particularly by virtue of section 15-A of the Bombay Rent Act, he is deemed to be the tenant under the said section. In order to appreciate this argument, it is necessary to refer section 15-A of the Bombay Rent Act:

"15A. (1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any 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 affect in any manner the operation of sub-section (1) of section 15 after the date aforesaid."

10A. The aforesaid section clearly lays down that the licensee must be in possession of suit premises on 1st day of February, 1973 as licensee. In other words, one should establish that on 1st February, 1973 he was the licensee and also he was in possession as such licensee. Unless both these conditions are satisfied, benefit of section 15-A would not enure to Dr. Pruthi. Admittedly on 1st February, 1973, he was not a licensee though he was in possession and occupation of the suit premises. The learned Counsel for Dr. Pruthi submits that he is occupying the premises as an agent of M/s. Rallis India Ltd. and therefore, he must be treated as a licensee. This argument is not available to Dr. Pruthi because the license is considered to be personal permission given to the licensee by the licensor. Mere reading of definition of license will make it clear. Section 52 of the Easement Act, defines the License as under:

""Licence" defined- Where one person grants to another, or to do a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

11. As the permission to do or continue to do in immovable property of the grantor does not create any interest in the property and this is not transferable also. Therefore, unless fresh deed of licence is executed in favour of Dr. Pruthi by the landlord, Dr. Pruthi cannot be treated as licensee under the landlord. A licence is not transferrable because in no interest is passed on to the transferee. Merely because Dr. Pruthi continues to occupy the premises even after the termination of licence by M/s. Rallis India Ltd. it cannot be construed to be a deemed transfer of licence in favour of Dr. Pruthi. Therefore, as I pointed out earlier, in order to attract section

15-A, two essential conditions are necessary namely the possession of the suit premises on 1-2-1973 and such possession must be of as a licensee. As pointed out earlier, in this case, the licence was already terminated in 1974. On 1-2-1973, M/s. Rallis India Ltd. was only lessee who is not in possession. The argument is advanced that the licence was only terminated in 1974 but section 15-A has right to the licensee to treat him as tenant if he is in possession on 1st February, 1973. The licence coupled with this possession will alone entitle a person to be a deemed tenant. By the provisions of the Bombay Rent Act, the character or incidents of the licensee and licensor has not been completely obliterated. Only thing is that certain restrictions are imposed on the exercise of their right as the licensor and licensee by the provisions of the Rent Act. Therefore, inspite of enactment of the rent Act, the original relationship of the licensee and licensor cannot be considered to be extinguished completely.

12. Another aspect of the argument is that on 1-2-1973, M/s. Rallis India is a licensee and possession of their employee should be treated as possession of M/s. Rallis India. Likewise, therefore, Rallis India should be treated as a deemed tenant which can be extended to Dr. Pruthi. Assuming that it can be possible, whatever rights they accrued under the Rent Act, they relinquished by their letter dated 16-7-1974.

13. In the light of the foregoing discussion, it can be seen that after termination of the license by M/s. Rallis India and Rallis India has informed the landlord that they are no more the licensee and from that moment onwards the possession of Dr. Pruthi of suit premises is must be that of trespasser. A trespasser no doubt is not entitled to protection of Rent Act. Therefore, in any event, Rent Act is not applicable either to the case of the petitioner in W.P. 3694 or the case W.P. 6164. Both the courts below held that the suits are not maintainable at the hands of both the petitioner. I find no illegality in that finding. Consequently both the petitions are liable to be dismissed, as no interference is called for by this Court.

14. In the result, above writ petitions are dismissed. Rule discharged. In the circumstances of the case no orders as to costs.

15. Petitions dismissed.