Mohanlal Bapubhai Shah Vs Anant Ramchan Dediz

Court: Bombay High Court

Date of Decision: Nov. 23, 1976

Acts Referred: Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 â€" Section 11, 11A
Civil Procedure Code, 1908 (CPC) â€" Order 23 Rule 3

Hon'ble Judges: R.M. Kantawala, C.J

Bench: Single Bench

Advocate: S.C. Pratap, S.S. Pratap and S.C. Page, for the Appellant; K.J. Abhyankar, for the Respondent

Final Decision: Allowed

Judgement

R.M. Kantawala, J.
The question involved in this revision application is whether a tenant is entitled to file a fresh application for fixation of

standard rent under the provisions of section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to

as the Act) even though in an earlier proceedings between the tenant and the landlord u/s 11 of the Act standard rent was fixed by the consent of

parties at a particular amount. Three plots of land situation at Sangli were let out by the petitioner landlord to the respondent tenant. Plot No. 1

was leased on January 2, 1946, at a rent of Rs. 250/- per month ; Plot No. 1/1 was leased on April 6, 1948, at a rent of Rs. 70/- per month and

Plot No. 199 was leased on December 14, 1952, at a rent of Rs. 31/- per month. The aggregate rent of three plots came to Rs. 351-9-0 per

month. The lease in respect of all the three plots was to continue upto October 30, 1970. In the year 1953 the lessee filed Miscellaneous

Application No. 90 of 1963 u/s 11 of that Act against the father of the petitioner in the Court of the Civil Judge, Junior Division Sangli for fixation

of standard rent of the three pieces of land. The trial Court by its order dated August 20, 1995 fixed the standard rent of the three plots at Rs.

126-11-4 per month. The father of the petitioner (landlord) preferred an appeal being Civil Application No. 357 of 1955 in the Court of the

District Judge South Satara, Sangli. Cross objections were filed by the tenants. In that appeal, by consent of the parties on April 15, 1958,

standard rent was fixed by the Appellate Court at the rate of Rs. 240/- per month and a consent order to that effect fixing the standard rent was

passed by the Appellate Court in the appeal filed by the petitioner''s father. Cross-objections filed by the tenants were withdrawn. It is the case of

the tenant that notwithstanding such fixation of standard rent for the years 1964 to 1970, the landlord used to recover in aggregate a sum of Rs.

323/33 per month by way of rent. Thereafter it is his case that rent at the rate of the half of the above figure was sent by money order by the tenant

to the landlord but the same was refused by the landlord on the ground that the lease had expired by efflux of time.

2. It may be stated that in the original lease in respect of three pieces of lands, it is the case of the landlord that he is given an option to purchase

the structure erected by the tenants on these pieces of lands on payment of 3/4th of the market value, while it is the case of the tenant that upon the

expiry of the lease he has option to renew the lease of the three pieces of land for a further period of 26 years on payment of 11/2 times the

contractual rents. In view of these contentions, the landlord filed a suit being Suit No. 44 of 1972 for specific performance. The trial Court passed

a decree for specific performance in favour of the landlord. The tenant has preferred an appeal being First Appeal No. 483 of 1976 in the High

Court and the same is pending before this Court.

3. The landlord gave a notice to the tenant on January 3, 1974 calling upon him to pay all the arrears of rent failing due since November 1, 1970. It

was further stated in the said notice that in default of payment of the arrears of rent such legal proceedings as may be permissible under the law

would be taken. A reply to this notice was sent by the tenant on January 10, 1974, whereby he called for a clarification from the landlord as

regards the rate i.e. at which the rent was demanded and was asked for. Alongwith this letter a sum of Rs. 4820/- was sent by way of provisional

rent and it was stated therein that the balance of the amount would be sent upon receiving clarification. On February 7th, 1974, the landlord filed a

suit against the tenant being Civil Suit No. 50 of 1974 claiming ejectment of the tenant on the ground of default in payment of rent in view of the

provisions of section 12 of the Act and for arrears of standard rent at the of Rs. 240/- per month. After the suit was instituted, on February 28,

1974, the tenant filed an application being Miscellaneous Application No. 20 of 1974, u/s 11 of the Act for fixation of standard rent of all the three

pieces of lands in question. The controversy in this revision application arises out of this application made by the tenant for fixation of standard rent.

4. The trial Court framed a preliminary issue in this application to the effect ""Is the application not maintainable in view of the provisions of section

11-A of the Rent Act?"". It took the view that it was maintainable. In Revision Application preferred by the landlord, the learned Extra Assistant

Judge, Sangli took the view that no case was made out by the landlord for inter erring with the order passed by the trial Court on the question of

maintainability of the application and he accordingly dismissed the revision application. It is against this revision application that the present revision

application is filed by the landlord.

5. Mr. Pratap on behalf of the landlord submitted that both the courts were in error in framing the preliminary issue in the manner in which it was

done. The real issue that should have been raised for adjudication between the parties was, according to his submission, whether the view of the

consent order dated April 15, 1958, passed by the learned District Judge, South Satara, Sangli, in Civil Appeal No. 357 of 1955 fixing Rs. 240/-

per month as standard rent of these three pieces of land was the tenant precluded or estopped from making a fresh application for fixation of

standard rent of the said three pieces of land either by reason of the provisions of section 11-A of the Act or section 11 of the CPC or otherwise

in law. He submitted that so far as this Court is concerned, uniformly the view has been taken except in one case that once standard rent is fixed

even by consent of parties in proceedings adopted under the Act, the landlord or the tenant, as the case may be, is precluded from making a fresh

application for fixation of standard rent either u/s 11 or by raising such an issue in a suit between the landlord and the tenant. His submission is that

in view of the fact that in the earlier proceedings in an appeal preferred by the landlord by consent of the parties standard rent was fixed at Rs.

240/- per month in respect of these three pieces of land, the tenant is now precluded or estopped from initiating fresh proceedings for fixation of

standard rent by making an application u/s 11 of the Act. He urged that a consent decree is not merely a contract between the parties but it is

something more than a contract. He therefore, submitted that such being the nature of a consent decree or order, it will not be permissible to the

parties to the same litigation or to their representatives in interests to agitate the same question between them by adopting proceedings u/s 11 of the

Act. In short his submission is that both the courts were in error in taking in view that the present application made by the tenant was maintainable

having regard to the events that had happened between the parties. Mr. Abhyankar on the other hand on behalf of the tenant submitted that when

an order is passed by the Court even u/s 11 of the Act by consent of the parties, it is not decide on merits and such an order can neither operate as

an estoppel nor can it preclude a party aggrieved thereby to adopt independent proceedings for fixation of standard rent by making a fresh

application u/s 11 of the Act. In short his submission was that both the courts were right in taking the view that notwithstanding the consent order

passed in the earlier proceedings fixing Rs. 240/- per month as standard rent of three pieces of land it was open to the tenant to make a fresh

application for fixation of standard rent as in the earlier proceedings the order was passed by consent of the parties and not upon adjudication by

the Court on merits of the case.

6. In my opinion, having regard to the matters in controversy between the parties, both the courts ought to have framed an issue for determination

as under :---

Whether in view of the consent order dated April 15, 1958, passed in Civil Appeal No. 357 of 1955 by the District Judge, Sough Satara, Sangli,

fixing Rs. 240/- per month as standard rent of the premises was the tenant estopped or precluded from instituting a fresh application u/s 11 of the

Act merely on the ground that earlier fixation of standard rent was not by adjudication by the Court by reason of the consent of the parties?

What is the nature of a consent decree or order is not open to such controversy. A consent decree passed by a Court of competent jurisdiction

cannot be treated on the same footing as a contract between the parties. To the compromise of the parties a command of the Court has been

super-imposed and that makes all the difference. See Govind Woman Shanbhag v. Murlidhar Shrinivas Shanbhag 1953(55) B L R 465. It is well

settled position in law that a consent decree has to all intents and purposes the same effect as res judicata as a decree passed in invitum, in raises

an estoppel'', as it is a decree passed in invitum. A consent decree, however, is a result of the agreement on which it is founded and it may be set

aside on any ground that would invalidate an agreement between the parties. It is not the case of any of the parties in this Revision Application that

the earlier order fixing Rs. 240/- per month as standard rent is either a nullity or invalid on any of the grounds on which a consent decree or order

can be legally set aside.

7. So far as this Court is concerned, what is the effect of fixation of standard rent by consent of the parties in proceedings adopted under the Act,

the matter has come up for considerations for a number of years and barring the observations in one case all along uniformly a view has been taken

that standard rent though fixed by consent of parties in proceedings under the Act is binding between them and it is not open to any of the parties

or their representatives in interest to initiate fresh proceedings for such fixation of standard rent either by making an application u/s 11 or by raising

such an issue in a suit between the landlord and the tenant. The matter was fist considered by Gajenderagadkar, J., as he then was in the

Parbhudas Harjivandas Mehta v. Sheth Trikamdas Ghunilal, Civil Revision Application No. 533 of 1953 (with Civil Revision Application No.

1253 of 1953 and Nos. 980, 982 and 807 of 1954, decided by him on August 11, 1954. After scrutinising the provisions of the Act he observed

that he was unable to see how it could be contended that it was not open to the parties at dispute as to the standard rent of premises to

compromise the said dispute under the provisions of the Act. He pointed out that it was undoubtedly true that the policy of the Act was a

benevolent policy and the policy was to help the tenants. But he was unable to accept the argument that the Act either expressly or be necessary

implication made it obligatory on the Court to decide the matter. According to the learned Judge, it would be perfectly competent to the parties to

settle the dispute in regard to the standard rent and the mere fact that after the tenant had entered into an agreement in respect of this dispute he

had begun to feel that he had been persuaded to enter into an agreement to his prejudice would not justify the argument that the compromise

agreement itself was a nullity. Upon the question whether a consent decree would constitute a bar of res judicata or not, he observed it was

necessary to make a distinction between a consent orders or decrees which might be contrary to law and those which might be prohibited by law.

In the Act there was no prohibition preventing the parties from setting the dispute as to the standard rent by agreement. Even if the consent order

fixed the standard rent at an amount which might be fixed by the controller, that would not make the consent order contrary to law. He summed up

his view by saying :---

Therefore, in my opinion, the courts below were right in coming to the conclusion that the consent order passed in Application No. 326 of 1948-

49 precludes the Court from trying the same issue cover again the present proceedings.

To the same effect was the view taken by Shah, J., as he then was in (Rajaram Balkrishna Awar v. Sardarkhan Amirkhan Pathan, Civil Revision

Application No. 1691 of 1955 decided on August 27, 1956. In that case a consent decree was passed in a previous proceeding between the

same parties and under it the standard rent of the premises was fixed at Rs. 19/- per month. The view which was taken by the courts below in a

subsequent proceeding was that the standard rent should be fixed at Rs. 12-8-0 per month. It was contended on behalf of the landlord before the

said learned Judge that the view which was taken by the Court below was erroneous and that the standard rent should be fixed at Rs. 19/- per

month as the parties had come to an agreement in a prior proceeding, which was the basis of the consent decree in that proceeding, that should be

the standard rent of the premises. A contention was advanced on behalf of the tenant before the learned Judge that an agreement to pay rent in

excess rent which was found by the courts below to be in the proper standard rent could not be regarded as lawful agreement upon which the

Court could pass a decree binding upon the parties. Such a contention was negatived by the learned Judge and he took the same view that was

taken by Gajendragadkar, J. in the matter referred to above.

8. A similar question come up for consideration before a Division Bench of this Court in Popatlal Ratansey Vs. Kalidas Bhavan, . In that case a

tenant filed an application under the Act for fixation of standard rent for premises leased to him by his landlord. The landlord filed a cross-suit for

possession alleging that the tenant was in arrears of rent and that he had sub-let the premises. The trial Court, in the tenant''s application fixed the

standard rent at Rs. 40/- per month and decree the landlord''s suit for possession. Appeals against these decisions were filed by the parties. While

these proceedings were pending, the parties agreed that the ""reasonable and standard rent of the premises"" was Rs. 91/- per month. The landlord

gave up his claim to recover possession of the premises and the tenant on the other hand abandoned his contention that the proper standard rent of

the premises was Rs. 40/- per month and he accepted the landlord''s figure that Rs. 91/- per month should be the standard rent. When this

agreement was submitted to the appeal Court, the Court considered that it was a fair and just agreement and it was satisfied that there was nothing

unlawful about it. Accordingly it passed a decree in terms of the agreement by which the dispute between the parties was decided and the

applicant-tenant was accepted by the landlord as his tenant upon his paying standard rent at the rate of Rs. 91/- per month. Thereafter the landlord

filed a suit to recover possession of the premises from the tenant alleging that the tenant had failed to pay rent and was in arrears of it. The tenant

contended that he was not in arrears of rent, as the standard rent for the premises was Rs. 40/- per month, as previously fixed by the Court and

that he had paid rent at that rate. On the question whether the consent decree which was passed in the appeal would operate as a bar to the

tenant''s contention in this suit that the standard rent for the premises was Rs. 40/- per month and not Rs. 91/- per month. The Division Bench of

this Court held that in the circumstances of the case, between the present parties, who were also parties to the appeals the determination of the

standard rent as embodied in the consent decree passed in the appeals would constitute a bar of res judicata and would stop the tenant from

contending that the standard rent should not be Rs. 91/- per month as fixed by the consent decree but it should be Rs. 40/- per month. The

Division Bench pointed out that there is a fundamental distinction between an agreement which is embodied in a lease and the decision which is

embodied in a consent decree. The agreement which is embodied in a lease is purely and simply an agreement as to rent. On the other hand, what

is embodied in a consent decree in the decision of the Court as to standard rent. Such a decision or judgment of the Court would stop the tenant

from contending in a subsequent application under the Bombay Rent Act that the standard rent to which he had previously agreed was not the fair

rent.

9. It was urged by Mr. Abhyankar that the laid down by the Division Bench is no longer a good law as the provisions of the Act have been

amended by the Maharashtra Act 14 of 1962 whereby inter alia section 11-A was introduced in the Act. The said section reads as under:---

11-A. No Court shall upon an application or in any suit or proceeding fix the standard rent of any premises u/s 11, or entertain any plea that the

rent or increases are excessive, if the standard rent or the permitted increases, in respect of the same premises have been duly fixed by a

competent Court on the merits of the case, without any fraud or collusion or any error of the facts, and there has been no structural alterations or

change in the amenities or in respect of any other factors which are relevant to the fixation of the standard rent, or change in such increases in after

in the premises.

After referring to this section, it was urged by Mr. Abhyankar that the provisions of section 11-A amply that a tenant will be precluded from

making a fresh application for fixation of standard rent u/s 11 of the Act only if in the earlier proceedings rent was fixed by a competent Court on

the merits of the case. His submission was that such fixation on merits of the case pre-supposes an adjudication by the Court without the consent

of the parties and if in the earlier proceedings where the issue directly between the parties as regards the fixation of standard rent is settled by them

by consent notwithstanding the present pronouncement of the Court by putting its imprimatur or command will not preclude a tenant from making a

fresh application for fixation of standard rent. In my opinion, the section in a way is not exhaustive on the ground on which a Court has been

prevented from fixation of standard rent in a subsequent proceeding, and if an effect of a consent decree is to all intents and purposes the same as

res judicata as a decree passed in invitum it raises an estoppel and it is a decree passed in invitum. It is not the plea of the tenant in the present

application that the earlier proceedings for fixation of standard rent by consent of Rs. 240/- per month was liable to be set aside on any ground on

which an agreement between the parties can be legally corrected. In my opinion, there is nothing in section 11-A of the Act which will prevent a

consent decree or order fixing the standard rent passed in the earlier proceedings between the parties from operating as an estoppel between them

or those who obtained title from them. That such is the effect of section 11-A which has been introduced by Maharashtra Act 14 of 1962

becomes quite evident if regard be had to the statement of objects and reasons. The object of introducing section 11-A in the Act as stated in the

statement of objects and reasons is as under :---

It is noticed that the fixation of standard rent or permitted increases is canvassed in courts, years after a tenant takes over or the increase is made.

Consequently it is though proper that a limitation be laid down for making an application for fixation of standard rent, or permitted increases. A

provisions is also provided to be made that if standard rent is once is fixed by the courts, the same shall not the canvassed again and again, unless

there are structural changes or change in the amenities, which affect the fixation of standard rent.

The objection and reasons, for introducing the section rather than supporting the contention of Mr. Abhyankar negative the same. It was

introducing with a view to prevent an abuse of the process of the Court on the part of the tenant in making repeated applications for fixation of

standard rent even though in the earlier application he got the same fixed in the manner permitted by law. It should not be overlooked that having

regard to the provisions of Order 23, Rule 3 of the CPC a compromise between the parties has to be accepted by the Court only subject to the

condition that it is lawful. In the present case, nothing is stated in the application made by the tenant to indicate that the earlier consent order fixing

Rs. 240/- per month as standard rent was unlawful or suffered from any infirmity on the basis of which an agreement between the parties can be

invalidated.

10. After the introduction of section 11-A, question relating to the right of a tenant to make a fresh application for fixation of standard rent had

come up for consideration on two occasions before the Single Judges of this Court. Vidya, J. who had the occasion to consider this question in the

case of Vasant Ramchandra Sharma Vs. Narayanibai Mulchand Agrawal and Others, , had taken the view that the mere fact that for some

reasons the tenant agreed to have a consent decree about standard rent does not preclude him from raising a fresh dispute about it under sections

11(1)(e) and 11(2). If really a dispute exists it cannot be said to be a mala fide one. The learned Judge has taken that view upon an erroneous

assumption that section 11-A of the Act exhaustively enumerates the grounds on which a tenant is precluded from raising a fresh dispute about the

fixation of standard rent. There is nothing in the language of section 11-A or any other provisions of the Act to warrant such an approach. The

absence of the non-applicability of the clause has been completely overlooked by the Court. The fact that section 11-A is worded in a negative

manner would indicate that when the provisions of that section are applicable, the Court shall have no jurisdiction. But there is no thing in that

section to indicate that it is a comprehensive provision enumerating all the circumstances in which the Court is precluded or estopped from going de

novo into the question of fixation of standard rent even though it is fixed by the consent of the parties lawfully in the earlier proceedings between

them or those from whom they derived title.

11. The matter came up for consideration again before Sapre, J. in Lilo Kishanchand Jaisinghani v. Odhavji Popatlal Abya 1974(76) B L R 523.

The learned Judge has taken the view that a bar of estoppel can be raised against a petitioner (original applicant) who had filed an earlier

application for fixation of standard rent u/s 11 of the Act from her conduct of allowing her application to be dismissed in default at a stage where an

indication was available that she did not want to go on with that application and impliedly admitted that the rent that was being paid by her was the

standard rent. No independent right is available to a tenant u/s 11-A of the Act to file an application for fixation of standard rent apart from the

right which the tenant has u/s 11. The intention of the Legislature in inserting section 11-A in the Act is not to create any new right in the tenant to

file an application which would be barred on the ground of res judicata, correctly etc., u/s 11. In my opinion, the position in law has been correctly

laid down by Sapre, J. That view has been taken by him even in a case where the earlier application made by a tenant for fixation of standard rent

was dismissed for default of appearance. The principle laid down by him will be more suitably attracted if in the earlier proceedings by consent of

parties standard rent has been fixed lawfully by the Court, it will operate as an estoppel and would preclude the tenant from re-agitating the same

question by making a fresh application for fixation of standard rent u/s 11 of the Act.

12. It was urged by Mr. Abhyankar that the tenant was demanding Rs. 323.33 by way of standard rent upto 1970 and an issue will survive

between the parties as to that amount in any way. Such a contention is not permissible if regard be had to the clear and unequivocal statement

made by the landlord in answer to the application for fixation of standard rent. In paragraph 2 of his reply to the application he has stated that the

standard rent is a admittedly fixed by the Court at Rs. 240/-; that the landlord does not claim or demand anything in excess and than that,

therefore, the application does not lie. In view of these express averments in the reply to the application, question of fixation of standard rent in

excess of Rs. 240/- per month was not in controversy between the parties and such a question will not arise for consideration before the Court.

13. In the result, the revision application is allowed. The rule is made absolute. The order passed by both the sub-ordinate courts holding that the

application of the tenant for fixation of standard rent was maintainable is set aside and it is hereby held that in view of the consent order dated April

15, 1958, passed in Civil Appeal No. 357 of 1955 by the learned District Judge, South Satara, Sangli fixing Rs. 240/- per month as the standard

rent of the three pieces of land, the respondent-tenant is precluded from making a fresh application for fixation of standard rent of the said premises

over again. The application of the tenant for fixation of standard rent is dismissed with costs throughout.