

(2004) 04 BOM CK 0139

Bombay High Court

Case No: Writ Petition No. 859 of 1988 along with Civil Application No"s. 977 of 2001 and 617 of 2002

Shankarao Rangnath Ghodake
deceased by heirs Chandrakant
Shankarao Ghodake and
Another

APPELLANT

Vs

Ramchandra Bapu Koparde
deceased by heir Shrinivas
Ramchandra Koparde

RESPONDENT

Date of Decision: April 5, 2004

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1)

Citation: (2004) 3 MhLJ 224

Hon'ble Judges: F.I. Rebello, J

Bench: Single Bench

Advocate: S.S. Gokhale, for the Appellant; N.J. Patil, for the Respondent

Final Decision: Dismissed

Judgement

F.I. Rebello, J.

Petition along with the Civil Applications have been disposed of by this common order. The petitioner herein since deceased and now represented by L.R.s was the original Defendant.

2. The respondent herein had filed a suit against the petitioner herein for his eviction on the ground that the petitioner was in default of arrears of rent for more than six months and further that he requires the premises for his bona fide personal occupation and that greater hardship would be occasioned to him than to the tenant petitioner. The trial Court framed issues for determination. Insofar as bona fide personal requirement is concerned, though the issue wrongly shows as

answered in the affirmative, a perusal of Paragraph 10, shows that while answering issue No. 2 the learned trial Court came to the conclusion that the original plaintiff had failed to make out case of personal bona fide requirement. However, insofar as ground of arrears of rent for more than six months answered the issue in the affirmative.

3. An appeal came to be preferred by the petitioner herein. Against the finding of the learned trial Court, the respondent herein filed cross objections in so far as finding against him in the matter of bona fide requirement. By judgment and order dated 14-1-1988 in Civil Appeal No. 210 of 1983, the learned Appellate Judge was pleased to dismiss the appeal. The learned Appellate Court confirmed the finding of the trial Court insofar as arrears of rent is concerned. Insofar as objections by the respondent herein, as to the need of the premises for personal bona fide requirement held that the respondent herein did require the premises for his personal bona fide use. However, held that no hardship would occasion to the original plaintiff than to the original defendant and accordingly rejected the contention of the original plaintiff u/s 13(1)(g) of the Rent Act.

4. It is this order which is the subject matter of the present petition. At the hearing of this petition, on behalf of the petitioner, it is pointed out that from Civil Application No. 977 of 2001 which is an application by the L.R.s of original plaintiff, that it appears that the original plaintiff by registered sale deed dated 20-7-1993 sold to respondent No. 1(g) the suit premises for the consideration of Rs. 50,000/-. It is further set out that all the other heirs had given their consent to the said transactions. Hence, respondent No. 1(g) is only entitled to prosecute the matter pending in the High Court, In view of that, relief sought for in the application is that the respondent No. 1(g) be treated as heir of the deceased defendant and record be amended accordingly. There is also prayer that the bona fide requirement of Shriniwas respondent No. 1(g) be also considered. In view of that it is contended that as the original plaintiff had sold the premises to respondent No. 1(g), respondent No. 1(g) could not have maintained the present proceedings on the ground of arrears of rent. Reliance is placed on the judgment in the case of N.M. Engineer and Others Vs. Narendra Singh Virdi and Another, in support of that proposition.

5. At this stage, reference may also be made to the Civil Application No. 617 of 2002. This is an application by the petitioners, setting out that they now have knowledge pursuant to the Civil Application No. 977 of 2001, that the original respondent has sold the suit house to respondent No. 1(g) and that after he had sold the suit premises to respondent No. 1(g), he could not be brought on record as heir of original respondent, but as a Purchaser. Reference is then made to Civil Application No. 977 of 2001 wherein on 11-2-2002 the learned Judge of this Court was pleased to pass the following order :

"None present. No reply has been filed opposing this Application. In the circumstances, cause shown in the Application has gone uncontroverted. Application allowed. Amendment to be carried out within two weeks."

It is therefore, prayed that the order of 11-2-2002 be set aside. When this application came up for hearing on 29-7-2002 an order was passed that this application be kept along with Writ Petition No. 859 of 1988.

6. We may first deal with the findings as recorded by the trial Court and appellate Court insofar as arrears of rent are concerned. The findings record that notice was sent to the defendant (Exh. 17) and supported by acknowledgment receipt Exh. 18. Subsequent finding is that rent was at the rate of Rs. 12/- per month and that the petitioner herein, did not file any application for fixation of standard rent within one month from the date of the notice and as such in these circumstances there is no dispute regarding the rent between the original respondent and original plaintiff. The other finding is about arrears of rent, which had been claimed to the tune of Rs. 324/- and that the original defendant had sent money orders, arrears only in an amount of Rs. 104/- thus leaving deficit of Rs. 220/-. Considering that the original plaintiff has made out a case of arrears and the consequences must follow.

7. In an appeal there is concurrent finding of fact that the arrears of rent on the date of suit i.e. on 15-6-1978 was Rs. 324/- for the period between 1-1-1976 and 31-3-1978 and that from the date of filing of the suit i.e. 14-11-1979 the arrears of rent was Rs. 324/- and Rs. 228/- for the period between 1-4-1978 to 31-10-1979 totalling to Rs. 500/-. That the original defendant had deposited arrears of Rs. 124/- on 9-10-1978, Rs. 332/- on 4-1-1979 and Rs. 36/- on 1-9-1979. The amount so deposited works upto Rs. 492/- and that amount is less than the amount of arrears of Rs. 500/- due and payable. Further findings recorded is that the petitioner did not pay or tender in Court the amounts demanded by the notice and as such it will have to be held that the petitioner was not ready and willing to pay the amount of arrears and permitted increases.

These are purely finding of fact. No perversity has been shown to interfere with the said concurrent findings of fact. It will therefore, will not be possible to interfere with the findings of the Lower Court as well also the appellate Court that the original defendant was in arrears of rent and had failed to deposit the amount on or before the 1st date of hearing.

8. With that, now we may come to the contention as advanced by the petitioners namely that the petitioners except for petitioner 1(g) are not entitled to proceed with the proceedings and apart from that respondent No. 1(g) cannot support the original application made by the previous owner and therefore, eviction on the ground of arrears of rent should be rejected. We may firstly note that the suit was filed in the year 1973 being Regular Civil Suit No. 128 of 1978. That suit came to be allowed on 25-3-1983. On the date of the suit was filed and on the date the suit was

decreed, it was original plaintiff who was the owner of the property. The judgment therefore, was in his favour on the date it was pronounced and the suit could have been maintained by him. The original plaintiff then filed appeal being Civil Appeal No. 210 of 1983. That appeal was dismissed on 14-1-1988. In other words, the judgment of the trial Court was confirmed. On that date also, it was the original plaintiff who was the owner of the property and had not transferred the property in favour of respondent No. 1(g).

Petition then came to be filed in the year 1988. Even the record will bear out that the petition was filed against original defendant. During the pendency of the proceedings and after the property transferred in favour of respondent No. 1(g) on 20-7-1993, that he has expired, L.R.s were brought on record pursuant to the order dated 1-2-2001 passed in Civil Appeal No. 181 of 2001. With the above we may consider the contention as raised on behalf of the present petitioners and the judgment relied upon. In the case of N. M. Engineers (supra) a few facts should be noted. The wife of the first appellant, Banoobai, died on 3-10-1966. The first appellant in his capacity as owner and also as heir of his wife together with her other heirs served a notice dated 2-5-1967 calling upon the first respondent to pay arrears of rent for the period commencing from 1-11-1966 to 30-4-1967 within a month. The first respondent did not pay the said arrears. That necessitated the appellant to file the suit for possession and for recovery of arrears of rent. In the said suit, the legal representatives of the deceased Banoobai, were made pro forma defendants Nos. 2 to 45. On 8-6-1967, they released all their rights, title and interest in favour of appellant No. 1. The suit was decreed in favour of the appellant u/s 12(3)(a) and (b) of the Act. On behalf of the respondent it was contended that on 8-6-1967 the property was leased out in favour of the appellant as pro forma respondent relinquishing their share but in the said relinquishment deed, no assignment much less a specific assignment of rent was made in favour of the appellant in the absence of such an assignment, the appellant could not recover as rent. Before the Apex Court in issue was the validity of the notice served for the purpose of maintaining the suit. The notice is dated 2-5-1967 and on 8-6-1967 lease deed came to be executed in favour of the appellant by the proforma defendants. The suit came to be filed on 19-6-1967. The question therefore, before this Court was whether the notice was in conformity with Section 12(3)(a). The findings recorded was that on the date of the notice there is no arrears outstanding for the period of six months or more. Further lease deed was executed on 8-6-1967 in favour of the appellant and in that lease deed there was no assignment of rent in favour of the appellant. In these circumstances, the Apex Court held that whatever might have been due prior to 8-6-1967 cannot constitute arrears of rent and in these circumstances notice does not satisfy requirements of Section 12(3)(a). Apart from that that arrears had been deposited. This is what was in issue before the Apex Court and this is what the Apex Court has so held in the judgment. The issue there was whether there was a debt. The finding was that there was no debt but an

actionable claim and in these circumstances, it was held that the notice issued was not legal.

9. We may now address ourselves to the facts of the present case. In the first instance when the suit was filed, it was by the original plaintiff as owners/landlord. On the date when the suit was filed, the original plaintiff was entitled to maintain the suit on the ground of arrears of rent. He obtained a judgment in his favour when he continued to be the owner. The appeal thereafter preferred was contested by him as owner and appeal was dismissed. In other words, the judgment was in favour of the original plaintiff. Those orders were subject matter of the challenge before this Court in exercise of its extra ordinary jurisdiction. It was during the pendency of these proceedings that the original respondent sold the premises in favour of the respondent No. 1(g).

The question therefore, is whether on these facts, it can be said that the suit filed by the original plaintiff and the decree obtained by him becomes non est as in the year 1993, the title of the property was transferred in favour of the respondent No. 1(g). Even considering that the property has been transferred in favour of respondent No. 1(g), the factual position would be that the suit had been filed and decree obtained in favour of the original plaintiff. The challenge is to the original decree for eviction where initially all the L.R.s were brought on record. Subsequent to the order of this Court passed in Civil Application No. 977 of 2001, name of L.R.s were struck off and respondent No. 1 alone was entitled to prosecute the proceedings. Respondent No. 1(g) apart from being purchaser had been brought on record also as legal representative. The L.R.s in their application have set out that the premises have been sold to respondent No. 1(g) and that they have given their consent in writing to the transaction and it is respondent No. 1(g) who alone is entitled to prosecute the matter. Notice u/s 12 was lawfully given by original plaintiff. On perusal of the Sale deed it is seen that no right was reserved in respect of rent in favour of the original landlord. This exercise was done though the sale deed was not on record on account of the submissions of the learned counsel for the respondent and as in the application by the L.R.s they sought to rely on the sale deed. The contention advanced on behalf of the petitioner therefore, has no merits. Apart from that other legal heirs are confirming parties to the said sale deed. Considering the above, the only contention raised on behalf of the petitioner herein has no merits.

10. In the light of that, petition dismissed. Rule discharged. No order as to costs. Civil Application stands disposed of accordingly. C.C. expedited.