2009 eGLR_HC 10006713

Before the Hon'ble MS ABHILASHA KUMARI, JUSTICE

DHANWANTLAL VASANTLAL GANDHI Vs. ARUNABEN D/O MADHUKANTABEN SHANTILAL SHAH AND 2 - OPPONENT(S)

CIVIL REVISION APPLICATION No: 192 of 2009 , Decided On: 26/11/2009

H.M.Parikh, Samata V.Patel, Nanavati Associates

SMT. JUSTICE ABHILASHA KUMARI

1. Rule. Ms.Samata Patel, learned advocate for Nanavati Associates,waives service of notice of Rule for the respondents. In the facts and circumstances of the case,this Revision Application is being heard and decided today.

2. The present Revision application has been filed under Section 29(2) of the Bombay Rents,Hotel and Lodging House Rates Control Act, 1947 ("The Rent Act" for short) impugning judgment and order dated 20-12- 2008 rendered by the District Court,Nadiad in Regular Civil Appeal No.70 of 2000, whereby the judgment and decree dated 16-2-2000 passed by the Trial Court in Regular Civil Suit No.182 of 1994, came to be confirmed.

3. The brief facts of the case, relevant for the decision of the present Revision Application are that, the petitioner is the original defendant and tenant of the rented property bearing City Survey No.4402, situated behind Nagina Masjid, Kumbharwada,Kapadwanj. The respondents are the original plaintiffs and owners of the suit property. The petitioner rented the property from the father of the respondents, for the purpose of starting a Plastic Factory. The said Plastic Factory was started by the petitioner by obtaining a loan from the Gujarat State Financial Corporation. The petitioner was paying rent at the rate of Rs.70/- per month, to the father of the respondents. The Plastic Factory put up by the petitioner remained operational for about ten years, after which, for some reason, the petitioner could not continue the manufacture of plastic goods and the business was closed, in the year 1990. The Gujarat State Financial Corporation took possession of the factory premises and auctioned the machinery of the petitioner in the year 1992. The respondents-plaintiffs, after issuance of statutory notice calling upon the petitioner to hand over possession of the demised property, filed Regular Civil Suit No.182 of 1994, inter alia, on the ground that the petitioner is in arrears of rent and on the ground of non-user. The Trial Court framed eight issues. The suit of the respondents-plaintiffs was decreed upon the findings arrived at by the Trial Court on issue No.3, which was on the point of non- user of the demised premises for the purpose for which they were let out for a period of six months before filing of the suit, and a decree of eviction

was passed against the petitioner. Being aggrieved by the said judgment and decree of the Trial Court, the petitioner preferred Regular Civil Appeal No.70 of 2000 in the District Court, Nadiad, which came to be dismissed by the impugned judgment and order, hence the present Revision application.

4. Mr.H.M.Parikh, learned counsel for the petitioner has submitted that as per the provisions of Section 13(1)(a) of the Rent Act, it is incumbent upon the Courts below to arrive at a finding whether there is a reasonable cause or not, for non-user of the premises in question, which has not been gone into by both the Courts below. It has not been appreciated by the Trial Court or the lower Appellate Court, that the Gujarat State Financial Corporation had sealed the premises and taken away the machinery which has been auctioned,so there was a reasonable cause and the petitioner was unable to use the premises for the purpose for which they were let out. It should have been considered by both the Courts below that due to the premises having been sealed, there was sufficient cause to prevent the petitioner from carrying on the business. In this regard, the learned counsel for the petitioner has referred to Mangaldas Devjibhai v. Lalitkumar N.Doshi, 2001(2) GLR 1286, wherein it is held that while exercising revisional jurisdiction under Section 29(2) of the Rent Act, the High Court can certainly examine whether the findings arrived at by the Courts below are based on evidence on record or not. The learned counsel for the petitioner has further contended that "Reasonable cause" is a very wide term, which has been interpreted by this court in Khemchand Kalidas Mehta v. Kothari Gubharuchand Motilal, 1996 (1) GLH 413, and it is to be seen in the facts and circumstances of the case whether there was reasonable cause for non-use of the premises for the purpose for which they were let out or not and, in the present case, the judgment of the first Appellate Court is erroneous as this aspect has not been considered. While confirming the judgment and decree of the Trial Court, the lower Appellate Court has fallen into error. It ought to have been seen by both the Courts below that the petitioner was in a poor financial condition, which resulted into taking possession of the machinery and its auction, by the Gujarat State Financial Corporation. In the circumstances, there was sufficient and reasonable cause for not using the premises for the purpose for which they were let out, and in view of the above, the impugned order may be quashed and set aside, and the Revision Application may be allowed.

5. On the other hand, Ms.Samata Patel for Nanavati Associates, learned counsel for the respondents has strongly opposed the revision application by submitting that:

(a) There are concurrent findings of fact rendered by both the Courts below on the basis of evidence on record therefore, this Court while exercising revisional jurisdiction, may not entertain the revision application.

(b) The findings arrived at by the Trial Court, as confirmed by the first Appellate Court, are based on proper appreciation of evidence which has been minutely discussed in the said order and the ratio laid down in Mangaldas Devjibhai v. Lalitkumar N. Doshi (Supra) is not applicable to the facts and circumstances of the case, though the principle of law is not disputed.

(c)It has come on record on the basis of evidence that after the auction of the property in the year 1992, the demised premises were not being used for the purpose for which they were let out and as per the panchanama of the premises, the light and electricity connections had been disconnected, and the premises were in a state of neglect and were unused. There was rubbish and cobwebs in the room and the toilet and bathroom were not in a usable condition, and no articles were found in the room,indicating that the premises are being used for the purpose for which they were let out.

(d)Even in the reply to the notice issued by the respondents, the petitioner has not stated that the premises were used for the purpose for which they were rented, or that any business was being carried on there after auction of the machinery in the year 1992. It is only during trial that the petitioner tried to put up a case that he was manufacturing string on the said premises, but the Trial Court found no evidence on record to substantiate this aspect, and this finding has been rightly confirmed by the lower Appellate Court.

(e) It is for the petitioner to prove that there was reasonable cause for non-user of the premises, which he has failed to do and both the Courts below have come to a conclusion, on the basis of cogent evidence on record, that the premises have not been sued for the purpose for which they were let out, within the stipulated period.

(f) As there is no infirmity in the findings arrived at by the Courts below, the petition may be dismissed.

6. I have heard the learned counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record. It is an admitted position that the petitioner had rented the property from the father of the respondents for the purpose of starting a business for manufacture of plastic goods and towards this end, a Plastic Factory was started on the premises, after obtaining a loan from the Gujarat State Financial Corporation. After about ten years, for some reason or the other, the petitioner could not continue the said business and the Factory was closed in the year 1990. Possession of the same was taken over by the Gujarat State Financial Corporation and ultimately the machinery came to be auctioned in the year 1992. The case of the respondents- plaintiffs is that the rented premises remained closed thereafter, and were not used for the purpose for which they were let out, prior to six months from filing the Suit. The Suit was filed in the year 1994. It was also contended that the petitioner was not paying regular rent. While deciding issue No.3 regarding non-use of the premises for the purpose for which they were let out for a continuous period of six months preceding the date of the Suit, the Trial Court has meticulously discussed the evidence on record. It has been held in the said order that though the petitioner tried to put up a case that he was manufacturing string after the auction of the property in 1992, he has neither been able to produce any evidence in the shape of bills for purchase of raw material, nor has supplied the names of the Traders to whom the goods were sold, or from whom the material was purchased. Moreover,no Books of Accounts have been produced. More specifically, it has been emphasised by the Trial Court in its order, that even in the reply to the notice issued by the respondents-plaintiffs, the petitioner had not stated that he is carrying on the business of manufacture of string on the suit premises. The panchanama of the rented

premises has been described in detail by the Trial Court by stating that the premises in question are in a locked condition and are not being used for any purpose. There was dust and cobwebs in the rooms and the bathroom and toilet were in a state of non- repair and had not been cleaned for a long time. Moreover, no machinery has been found on the premises to substantiate the say of the petitioner that he is manufacturing string thereupon. Considering the evidence on record, the Trial Court has come to the conclusion that the suit premises have remained in a locked-up condition for a long period of time and have not been used for the purpose for which they were let out, within the stipulated period. The above findings of the Trial Court have been considered and confirmed,by the lower Appellate Court in the impugned judgment and order.

7. Having gone through the material on record and having considered the submissions made by the learned counsel for the respective parties as well as the judgments cited at the Bar,in my view the impugned judgment does not suffer from any infirmity or perversity, so as to warrant interference. The learned counsel for the petitioner has placed reliance upon a judgment of this court in Khemchand Kalidas Mehta v. Kothari Gubharuchand Motilal (Supra) by canvassing that, as "reasonable cause" is a very wide term, it is the duty of the Courts, below as well as of this Court, to ascertain whether there was reasonable cause for non-use of the premises or not and, in this case, the courts below have not discharged that duty. I am afraid that this contention of the learned counsel for the petitioner is made merely to be rejected. Paragraph 10 of the above-mentioned judgment,on which reliance has been placed, reads thus:

"10.No doubt, it is always open for the tenant to show that in a given case there is reasonable cause. If the tenant could prove that the non-user was due to reasonable cause, no decree for ejectment could be passed. Reasonable cause is a very wide connotation and the Court is obliged to consider the particular facts of each case before determining whether there is a reasonable cause or not. Temporary service or employment without settling elsewhere, spending long vacation outside, prolong illness and treatment thereafter outside, or imprisonment for any reason could be said to be reasonable cause for non-user. The aforesaid grounds are illustrative and not exhaustive. Again it may be clarified that what is reasonable depends on variety of circumstances and in the light of the proved facts on record. What is reasonable in case of one person may not be reasonable in the case of others. The onus is on the tenant to repel the presumption that his possession has ceased and to repel it, the tenant must establish by evidence that the non-user was referable or attributable to a reasonable cause. Spasmodic visit in the present case could never be said to be a reasonable cause for non-user of the demise premises. Both the Courts have found that the tenant had not used the premises for long. Even if it is presumed that the tenant makes casual visits to his house, that ipso facto does not constitute a reasonable cause for non-user saving him from the rigours of the provisions of Section 13(1)(k) of the Bombay Rent Act. Where the premises are let for residence and there is continuous non-user for years together, mere casual visit to the premises would not render the non-user as non- continuous. Constructive residence may not help the tenant. What is contemplated by the provisions of Section 13(1)(k) is the actual residence. Even if the plea of the tenant is accepted on its face value that he has been making spasmodic or casual visits to the premises, then also in the present case, it could not be said to be a regular or actual user for residence which is the lynchpin of the provisions of Section 13(1)(k) of the Bombay Rent Act."

8. The Court has considered certain illustrations in order to examine what could constitute "reasonable cause" for non-user, and has gone on to state that what is reasonable depends upon a variety of circumstances, to be seen in the light of proved facts on record. Moreover, it has been held that it is for the tenant to repel the presumption that possession has ceased and he must establish by evidence that non-user was referable or attributable to a reasonable cause.

9. Applying the principles of law enunciated in the above quoted judgment to the facts and circumstances of the present case, and on the basis of material on record, it emerges that the petitioner has not been able to establish that the non-user of the premises for the stipulated period of time, was due to any reasonable cause.

10. As the impugned judgment and order does not suffer from any manifest or jurisdictional error, interference of this court is not warranted.

11. For the aforestated reasons, the petition fails, and is dismissed.Rule is discharged.

Appeal dismissed