

Cdr. John. A.R. Deans I.N. and Others Vs. Mr. Anil Kumar Mitra

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Court : Mumbai

Decided On : Mar-08-1999

Reported in : 1999(3)BomCR364; (1999)2BOMLR283; 1999(2)MhLj330

Judge : T.K. Chandrashekhara Das, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115; Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Sections 13-A1 and A2 and 31-F

Appeal No. : Civil Revision Application No. 117 of 1994

Appellant : Cdr. John. A.R. Deans I.N. and Others

Respondent : Mr. Anil Kumar Mitra

Advocate for Def. : A.K. Abhyankar, Adv.

Advocate for Pet/Ap. : C.R. Dalvi and ;S.M. Gorwadkar, Adv.

Judgement :

ORDER

T.K. Chandrashekhara Das, J.

1. The petitioner has impugned in this revision application, the judgment and order dated 21-7-1992 passed by the competent authority, Konkan Division, Bombay in Case No. 12/89. The applicants are the owners of bungalow known as Chateau-

De-Blanche situated at 70, Church Avenue, Santacruz (West), Bombay 400 054. In or about the year 1972, the said bungalow was taken by the respondent on licence. He came to be in possession of the bungalow on the understanding that as soon as he was allotted company accommodation, he will vacate the suit premises.

2. The applicants filed application before the competent authority that the flat was used for occupation of applicant No. 1 and his family members. However because applicant No. 1 didn't require the flat immediately, due to service conditions, the suit premises was given on temporary basis to the respondent on leave and licence. The leave and licence was signed by applicant No. 2. It is further contended in the application that the fully furnished flat was given to the respondent for the temporary period. As per the family arrangement, the premises was always allotted to be occupied by Applicant No. 1. At the time of the licence executed on 8th May, 1972, the applicant No. 1 was employed in the Navy and transferred from place to place and due to the nature of service he had to stay with family in the naval headquarters allotted from time to time. It is further pointed that the applicant No. 1 had retired from the Navy on 30th September, 1986. Even after the retirement, as he could not vacate his naval quarter for want of an accommodation and was required to pay penal charges at the rate of Rs. 5,750/- per month from October, 1986. Since it was difficult for him to pay such exorbitant rent, he was compelled to vacate the naval headquarter in October, 1986 and he has been residing at different places on temporary basis. The applicant No. 1 is staying along with the members of the family consisting of wife and two children at temporary accommodation at part of No. H-172. Tarapore Gardens. Andheri (West), Bombay 400 058 on payment of Rs. 3,000/- per month. The applicant No. 1 was to vacate that accommodation on 31st December, 1998. As the respondent did not vacate the suit premises facilitating the applicant to occupy the same, the applicant had to plead with the owner to allow to continue the use of the part premises on the payment of compensation of Rs. 3,500/- per month. But he was allowed to occupy only upto 30th November, 1989. In the meantime, the application was filed by applicants before the competent authority along with certificate issued by the Authorised Officer under section 13A-1 of the Bombay Rent Act. The competent authority has by the impugned judgment dismissed the

application mainly on the following grounds:-

(1) That since the bungalow belongs to all the applicants, there is no agreement between the parties for partitioning the said bungalow with metesand bounds and allotting the first floor of the bungalow to applicant No. 1 and therefore, applicant No. 1 failed to establish the title of the suit flat.

(2) There was no provably of contract between the applicant No. 1 and respondents because the agreement of licence was entered into between the respondent and the applicant No. 2 the owner of the building.

(3) The certificate issued by the competent authority as contemplated under section 13-A1 will not ipso facto prove that he bona fide requires the suit premises.

(4) There is sufficient accommodation for the petitioner in the ground floor, where applicant No. 2 resides.

On these grounds, the application for possession of the suit premises was rejected by the competent authority.

3. I heard the learned Counsel for the petitioners Mr. Dalvi and Mr. Abhyankar for the respondents. Before proceeding further, it is necessary to extract section 13A-1 of the Bombay Rents, Hotel Lodging House Rates Control Act, 1947, hereinafter referred as Bombay Rent Act, as under:

13-A-1. Members of armed forces of the Union, Scientists or their successor-in-interest entitled to recover possession of premise required for their occupation.---

(1) Notwithstanding anything to the contrary contained in this Act or any contract,--

(A) a landlord, who,---

(i) is member of armed forces of the Union, or was such a member and has retired as such (which term shall include premature retirement), or

(ii) holds a scientific post in the Department of Atomic Energy of the Central Government or in any of its aided institutions hereinafter in this section referred to as a or was such a scientist and has retired as such (which term shall include

premature retirement) and one year has not elapsed since his retirement on the date of making of the application.

shall be entitled to recover from his tenant the possession of any premises owned by him on the ground that such premises are bona fide required by him for occupation by himself or by any member of his family, by making an application for the purpose of recovery of possession of the premises, to the Competent Authority: and the Competent Authority shall make an order of eviction on that ground if-

(a) in the case of a landlord who is a member of the armed forces of the Union, he produces a certificate signed by the authorized officer to the effect that,--

(i) he is a member of the armed forces of the Union, or that he was such a member and has retired as such, and

(ii) he does not possess any other premises suitable for residence in the local area where the premises are situated; or.....

(2) Any certificate granted under sub-section (1) shall be conclusive evidence of the facts stated therein.

Explanation---For the purposes of this section,---

(1) 'authorised officer', in relation to a member of the armed forces of the Union, means his commanding officer or head of service, including---

(i) in the case of an officer retired from Army, the Area Commander,

(ii) In the case of an officer retired from the Navy, the Flat Officer commanding-In-Chief, Naval command, and

(iii) In the case of an officer retired from the Air force, the Station. Commander;

Section 13-A2 of the Bombay Rent Act, reads as under:

'Landlord entitled to recover possession of premises given on licence on expiry of licence. (1) Notwithstanding anything contained in this Act, a licensee in

possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure on the licensee to do deliver the possession of the authorised premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence by making an application to the Competent Authority; and the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement or licence.'

4. On an examination of the above provisions, it can be seen that they were specially enacted for the purpose to extend some benefit to the personnels who retired from the armed forces or retired as scientists, as the case may be. Rigour of many of the other provisions of Bombay Rent Act, which are applicable to landlords is relaxed as far as these personnels are concerned. This legal position is clearly amplified in the case of *Shivram Anand Shiroor v. Mrs. Radhabai Shantaram Kowshik and another*, reported in : [1984]2SCR750 . In para 3 it is held by the Supreme Court:

'Section 13-A was enacted relaxing the rigour of section 13 in favour of a landlord who is or was a member of the armed forces and who because of the exigencies of his service was not able to occupy his own premises during the course of his service. It is implicit, however, that such a person, being presently or previously a member of the armed forces, was at a simultaneous point of time both landlord and member of the armed forces. If such landlord produces a certificate in the manner prescribed in section 13-A1 that would be conclusive proof that he does not possess any suitable residence in the local area. But that would not prove his bona fide requirement and as such all that he has to further prove is that he bona fide requires the premises for occupation by himself or any member of his family.

As soon as that is established, he is entitled to recover possession and does not have to further prove that greater hardship would be caused to him than to the tenant if a decree for possession is not granted. It is impossible on the plain language of section 13-A1 to further read down the provision as enabling a member or a retired member of the armed forces to recover possession of the premises only if he had himself originally let out the premises when he was a member of the armed forces and not if the tenancy had commenced before he became the landlord of the premises either by inheritance, partition, or any other mode of transfer of property.'

5. It can further be seen that a separate forum has been set up for considering the claims of such persons and to grant relief. Therefore, the contention of the parties in this case has to be examined and tested in the light of the objects to be achieved by enacting these provisions.

6. I heard Mr. C.R. Dalvi with Shri. S.M. Gorwadkar learned Counsel for the petitioner and Shri. A.K. Abhyankar, Counsel appearing for the respondent.

7. The first ground on which the application was dismissed as enumerated above is that the petitioner has not proved his exclusive title over the first floor of the suit premises. The competent authority on the basis of the lease agreement came to the conclusion that there is no partition between the appellee No. 1, appellant No. 2, appellant No. 3 and applicant No. 4 and that first floor was not exclusively earmarked to the share of the applicant No. 1. Competent, Authority has found that the licence was executed by applicant No. 2 with respondent and applicant No. 2 was collecting rent from the respondent. Therefore, application for eviction for the requirement of applicant No. 1 is not maintainable as there is no evidence that the applicant is the landlord of the premises.

8. Mr. Dalvi learned Counsel for the petitioner brought to my notice in this context, the facts that the applicant No. 1 was retired in the year 1986 and application was filed only on 1988 when he was compelled to vacate the premises which he was occupying as a tenant. Mr. Dalvi submits that when the certificate is obtained from the authorised Officer as envisaged under 13-A1, it is conclusive evidence as far as the applicant is the member of the armed forces and has retired as such. It is

also conclusive to the fact that he does not possess any other premises suitable for his residence in the local area where the premises are situated. He submits that the competent authority has no material before it to point out that there are suitable premises in the local area. He laid emphasis on the words used in the sub-clause (ii) of section 13-A1 of the Bombay Rent Act, 'suitable for residence in the local area'. Mr. Dalvi pointed out that the competent authority rejected the application for lack of bona fide only on the ground that the petitioner can occupy the ground floor of the suit premises where applicant No. 2 is staying. It has come out in the evidence that the ground floor is meant for occupation of the mother. The ground floor is sufficient for occupation of applicant No. 1 and his family also. The tower Court has come to this conclusion relying on the admission of the mother of applicant No. 1 who examined before the Court that the applicant No. 1 and his family members used to come on vacation. In other words the occasional visits to suit premises, applicant No. 1 and his family and their stay in the ground floor is taken as the circumstance that the ground floor is there for the occupation of applicant No. 1. Mr. Dalvi attacked this conclusion arrived at by the competent authority that merely applicant No. 1 and his family during their occasional visits used to stay in the ground floor cannot be treated as premises suitable for accommodation. I find substance in the contention of Mr. Dalvi.

9. He also submits that assuming that applicant No. 1 failed to establish his exclusive title over the first floor of the premises, the fact that he is the owner of the suit premises is not in dispute. Even a co-owner is entitled for applying for eviction for the occupation of another co-owner. Therefore mere failure of proving the exclusive title of the premise's of the applicant No. 1 cannot be the ground for rejection of the application of the petitioner.

10. Mr. Dalvi cited another decision of the Supreme Court in Kanta Udharam Jagasia (Miss) v. C.K.S. Rao, reported in : AIR 1998 SC569 . In para 12 of the said judgement, the Supreme Court was referring to the contentions of the Counsel for the landlord which is extracted below (Para 12 Bom.C.R.):

'Mr. Harish N. Salve learned Senior Counsel appearing for the appellant, submitted that the High Court exceeded its revisional jurisdiction in reappreciating

the evidence and failed to appreciate that the appellant was posted as a Scientific Officer as per the Presidential Order, which had been gazetted and it was not for the High Court to go further and investigate whether the appellant was holding a scientific post or not. Even though the High Court found that the certificate was conclusive according to section 13-A1(A)(B) it went wrong in going beyond the certificate. He submitted that the purpose of introducing special provisions in the Act has been successfully defeated by dragging the proceedings for nearly a decade. According to the learned Counsel, the relationship of landlady and tenant cannot be disputed as admittedly the tenant was paying rents to the appellant as admitted by the respondent in his evidence. Even otherwise, the fact that the appellant is a co-owner of the premises is beyond dispute and as a co-owner she is entitled to file the application for eviction. In the absence of other co-owners disputing her claim, it is not open to the tenant to challenge her title. In support of his contention that a co-owner can file a petition for eviction the learned Counsel placed reliance on two judgements of this Court reported in *Kanta Goel v. B.P. Pathak*, : [1977]3SCR412 and *Pal Singh v. Sunder Singh*, : [1989]1SCR67 . He also submitted that on a plain reading of sections 13-A1 and 31-F the High Court ought not to have rejected the certificate and analysed the facts and evidence as if it was sitting in appeal over the decision of the competent authority. Broadly speaking the contents in the certificate regarding the plot number and the name of the Society leave no doubt about the facts given therein. In any case, the respondent-tenant is not prejudiced by small mistakes appearing in the certificate which have been unduly magnified by the High Court instead of ignoring the same.'

11. After considering the above argument and the argument of the opposite party, the Supreme Court held that even the co-owner in the absence of any objection of other co-owner disputing his claim, can maintain a petition against the tenant. In para 22 of the above judgment, it is observed by the Supreme Court :

'We do not think it is necessary to reiterate that a co-owner, in the absence of any objection from other co-owner, can maintain a petition for eviction against a tenant as it was not seriously disputed before us. We find that that question does not strictly arise for, consideration on the facts of this case as the legal heirs had

settled among themselves regarding allotment of distinct and different shares to each one of them, which was accepted by the Housing Society.'

12. Similar view has been taken by this Court as early as in the year 1992 by the Single Bench of this Court in Shripad Vasudeo Vatve and another v. Narhar Bargav Karmarkar, reported in : (1992)94BOMLR84 .

13. In view of the Supreme Court decision, on the interpretation of section 13-A1 even co-owner in view of the absence of the objection by the other co-owner can maintain the application. That means even if, as observed by the competent authority that the applicant No. 1 has not proved his tile on the first floor of the building, but as long as the other co-owners are not disputing the position that it is meant for occupation by applicant No. 1 and all co-owners are jointly contesting the application, I have no hesitation to hold that the finding of the competent authority on that point is liable to be set aside. So ground Nos. 1 and 2 on which the petition was rejected has no legal foundation.

14. Next ground on which the application was rejected is that he bona fide does not require the suit premises. Court below found that the ground floor is sufficient for stay of the petitioner also. As I pointed out earlier, the case of the petitioner before the Court was that the first floor of the building on the basis of the understanding between the members of the family is meant exclusively to be occupied by applicant No. 1. Merely because occasionally he could stay in the ground floor with his family where his mother was occupying it cannot be said to be the suitable alternative accommodation to reject the application of the petitioner. There is no material before the Court to show that there is any alternative suitable accommodation for occupation of the applicant No. 1. Therefore, the ground on which the competent authority dismissed the application of the applicant that there is alternative accommodation cannot be countenanced to.

15. The learned Counsel for the respondent Mr. Abhyankar took me to various parts of evidence and tried to impress upon me that the Competent Authority is justified in finding that there is sufficient alternate accommodation. On the perusal of the evidence, I do not think that the Competent Authority was justified in coming to this conclusion that there is suitable alternative accommodation for occupation of

applicant No. 1 merely on the ground that the applicant No. 1 during his occasional visits used to stay in ground floor. Mr. Abhyankar has contended that the findings entered by the Competent Authority cannot be interfered in exercise of the revisional jurisdiction of this Court conferred by section 31-F of the Act. As I pointed out earlier, I am not upsetting the findings of the Competent Authority. I am only pointing out the insufficiency and unreasonableness found in the conclusions arrived at by the Competent Authority on the facts proved. As I noted earlier, the findings of the Authority that the petitioner has not proved his title of the suit premises is not valid in view of the above Supreme Court decision reported in : AIR 1998 SC569 (supra). Consequently the findings of the competent authority that there is sufficient accommodation on the materials that the applicant No. 1 and his family occasionally came and stayed in the ground floor, will not be sufficient to hold that the alternative accommodation is available. This finding on the facts by the competent authority is not strong enough to upset the conclusions of the Certificate issued by the Authorised Officer under sub-section (2) of section 13-A1. Competent authority failed to examine the conclusion of the facts contained in the certificate. Therefore, mere occasional visits of applicant No. 1 and there is sufficient space to accommodate applicant No. 2 and his family will not affect the bona fide requirement of the applicant No. 1. Therefore, the conclusion deduced by the competent authority can be found to be illegal, In view of the above discussion, the order impugned in this writ petition is liable to be set aside.

16. In the result, writ petition is allowed.

Impugned order is set aside. Rule is made absolute in terms of Prayer Clause (a).
No orders as to costs.

Prayer Clause (b) :

This Honourable Court be pleased to quash and set aside the impugned judgement and order dated 21-7-1992, passed by the competent authority, Konkan Division, Bombay in Case No. 12/1989, and the application No. 12 of 1989, filed by the petitioners be allowed.'

