



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 SECOND APPEAL NO. 63 OF 1992

SHANTILAL KRISHNADAS PAREKH AND OTHERS
VERSUS
RAMANLAL HEMLAL BHARATIYA

Mr. V. J. Dixit a/w Mr. S. V. Dixit and M. D. Deshpande i/b Mr. U. S. Malte,
Advocate for the appellants
Mr. V. R. Dhorde, Advocate for respondent nos.1-A to 1-D, 2-A and 2-B.

CORAM : R. M. JOSHI, J.

DATE 22nd JANUARY, 2025

PER COURT :-

1. This appeal is filed under Section 100 of the Code of Civil Procedure to take exception to the judgment and decree passed by the first Appellate Court in R.C.A. No. No.517/1983, whereby the judgment and decree passed by the trial Court in R.C.S. No. 54/1979 of decreeing the suit came to be set aside and consequently suit filed by the appellants/plaintiffs stood dismissed.
2. Parties are referred to as 'plaintiffs' and 'defendants' for the sake of convenience.
3. In order to appreciate the questions involved in this appeal, it is necessary to take into consideration the relevant facts of the case which are narrated in brief as under:

(i) Plaintiffs are the owner of the City Survey No. 3176 situated at Kasbe Dharangaon, Tq. Erandol, District Jalgaon. Plaintiffs claim that they are conducting business of cinema theater in the name and style 'Kumar Talkies' from the said premises. The plaintiffs are owner of the land, structure as well as the machinery and other articles used for cinema theater. It is further case of the plaintiffs that there was an agreement dated 11/10/1961 between plaintiffs and defendants for conducting the said business of cinema theater, for a period of three years. On 23/02/1964 another agreement came to be executed between them with increase in the lease rent. It is the case of the plaintiffs that the defendants did not pay lease rent from 01/11/1971. Defendants however filed application for determining standard rate being Misc. Civil Application No. 1/1978 before the Civil Court. It is contended by the plaintiffs that notice dated 23/01/1978 was wrongly issued under the provisions of Bombay Rents, Hotel and Lodging House Rates (Control) Act (for short 'Rent Act'), however, subsequently notice dated 13/01/1979 came to be issued under Section 106 of Transfer of Properties Act. On the basis of the said cause of action, suit was filed.

(ii) Defendants filed written statement contending that the

premises and the other articles are taken on rent under different agreements. It is claimed that the existing machinery was sold and new machinery was purchased in which no loss has been caused to the plaintiffs but in fact plaintiffs were profited by the same. It is denied that the defendants have failed to pay rent and wherein arrears thereof. It is further claimed that application was filed being Misc. Civil Application No. 1/1978 and pursuant to the same the amount of rent is deposited in the Court. It is specifically claimed that parties are governed by Bombay Rents, Hotel and Lodging House Rates (Control) Act and rights are accrued in favour of the defendants in respect of the suit property.

4. Learned counsel for both sides are heard.
5. The following substantial questions of law arise in this appeal.
 - (i) Whether the first Appellate Court has committed error in appreciation of the evidence on record and the case of the parties and this has resulted in to recording of perverse findings and in consequence dismissal of the suit.
 - (ii) Whether the first Appellate Court has committed error in interpreting the agreement (Exhibit 62) between the parties and has consequently drawn incorrect conclusion that the suit premises is covered by the provisions of Rent Act.

6. Learned counsel for the appellants/plaintiffs submits that the first Appellate Court has erred in interpreting the document and appreciating pleadings and the case sought to be made out by the plaintiffs before Trial Court. It is his submission that trial Court has rightly considered the pleadings and evidence on record more particularly the document i.e. agreements entered into between the parties in respect of the conducting of the business of cinema theater. By referring to the relevant agreements it is his submission that the terms of the said agreement more than sufficiently demonstrate that it was a case of a running business being conducted by the defendants on behalf of the plaintiffs and not the case of letting out the premises along with the machinery etc. He made grievance in respect of the judgment of the first Appellate Court on the ground that the said Court has failed to take into consideration the pleadings and evidence on record in proper perspective and dismissed the suit on the general ground that it is permissible under the provisions of Bombay Rent Act to let out a premises along with the machinery. It is his submission that the crux of the matter about the agreement between the parties and its terms is completely overlooked.

7. Learned counsel for the defendants on the other hand has supported the impugned judgment and order. It is his submission that

trial Court had committed error in making observation that the judgment of the Hon'ble Supreme Court in case of ***Dwarka Prasad Versus Dwarkadas Saraf, (1976) 1 SCC 128*** is upheld in the subsequent judgment in case of ***Natraj Studios (P) Ltd Versus Navrang Studios and Another, (1981) 1 SCC 523***. He took pains to draw attention of the Court to the observation made by the Hon'ble Supreme Court in the said judgment more particularly paragraph nos. 13 and 14 thereof. It is his submission by relying observation made therein that the Hon'ble Supreme Court did not find the submissions made on behalf of the plaintiffs acceptable that the dominant purpose of agreement was not for license to use the building but only incidental. Learned counsel for the respondent has also placed reliance on the judgment in case of ***Mohammad Jaffer Ali V. S. Rajeswara Rao and others, AIR 1971 Andhra Pradesh 156***.

8. There is no dispute about the fact the parties have entered into agreements in question. The issue is as to whether conducting the business of cinema theater is dominant purpose or sole purpose or not. Undeniably it was a running business which is being conducted by defendants. Agreement dated 10/10/1961 reveals the intention of the parties. It would be apt to take note of the relevant clauses of the said agreement dated 10/10/1961 (Exh. 62), which are reproduced thus:

“४. एपीडेमीक वगैरे कारणाने सरकारी व निम सरकारी कारणाने (हुकुमाने) सिनेमा १५ दिवसापेक्षा जास्त दिवस बंद ठेवावा लागल्यास त्या मुदतीचे भाडे तुम्ही आम्हांस सूट द्यावयाचे आहे. सरकारी व निम सरकारी नियमानुसार दुरुस्ती अगर नवीन कामे इलेक्ट्रीकल इन्स्पेक्टर अथवा अ.पी.डब्ल्यू.डी. इंजिनीअर यांनी दाखविल्यास ती दुरुस्ती व नवीन कामे तुम्ही मुदतीत करून द्यावयाची आहेत.

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११. तुमचेकडून सिनेमा टाकीज भाड्याने घेतेवेळी तुम्ही केलेल्या कॉन्ट्रॅक्ट पैकी जे पिक्चर्स चालविण्याचे शिल्लक असतील ती सर्व तुमचे कॉन्ट्रॅक्टचे शर्तीप्रमाणे आम्ही चालवू व त्याचे डीस्ट्रीब्यूटरचे शेअरची व इन्सस्टेन्ड टक्सची रक्कम आम्ही परभारे भरू व त्या त्या डीस्ट्रीब्यूटरचे तुमची डीपॉझीटची रक्कम व घेणे रक्कम आम्ही त्यांचे शेअर मधून कापून घेवू व ती तुम्हांस भरू. त्याबद्दल अलाहिदा यादी तुम्हांस आम्ही देवू. तुमचे कॉन्ट्रॅक्टपैकी चालणारे पिक्चरचा रोजीचा कलेक्शन रिपोर्टची नक्कल तुम्हांस देवू.”

. Clause nos. 4 and 11 in particular clearly shows that this is not an agreement of lease between the landlord and appellant, but the only intention of the parties reveals therefrom is that the main purpose of the said agreement was to conduct the business of running a cinema theater by defendants on behalf of the plaintiffs. The subsequent agreement dated 22/02/1964 also reaffirms intention of parties and agree terms of the previous agreement. It would be material to take note of relevant clauses of this agreement too, which reads thus:

“१. शर्त नं. १ मधील ठरावाऐवजी सि.स.नं. ३१७६ मधील थियेटरचे भाडे दरमहा रुपये ४५=०० (पंचेचाळीस) व मशिनरी वगैरेचे भाडे दरमहा रुपये २०५=०० (दोनशे पांच) एकूण रुपये २५०=०० (दोनशे पन्नास) आम्ही तुम्हांस दरमहाचे दरमहा नवीन सिनेमा चालू झालेपासून देत जावे. जुनी मशिनरी काढून टाकले पासून नवीन मशिनरी बसेपर्यंत भाडे हे सिनेमा बंद असला तरीही आम्ही तुम्हांस जुन्या भाड्याचे ठरावाप्रमाणे देवू.

२. नवीन मशिनरी बसविणेचा प्लॅन्स मंजूर झाला आहे. त्याप्रमाणे नवीन मशिनरी आणून फिटिंगचे व पासिंगचे काम चालूच आहे व त्याची टायल घेवून चालू

करून घेण्याचे काम आम्हीच करू. मटेरियलचा खर्च तुम्ही करावा.

३. शर्त नं. ८ मधील कूड ऑईल व ऑईलपेवजी इलेक्ट्रीक पॉवरचे बिल येईल ते आम्ही दरमहाचे दरमहा परभारे वेळचेवेळी देत जावू. इंस्टॉलेशनचा खर्च तुम्ही करावा. तेथे भरावयाची डिपॉझीट आम्ही भरू.

४. बाकीच्या दिनांक ११/१०/१९६१ करारनाम्याचे शर्ती आम्हांस जशाच्या तश्याच कबुल आहेत.

५. इलेक्ट्रीक इंस्टॉलेशनचा खर्च तुम्ही करावा व डिपॉझीट आम्ही भरू.’’

9. The above clauses exhibit intention of parties and conduct of business by defendants on behalf of plaintiffs, when it says that the expenses towards fitting new machinery was to be borne by the Plaintiffs. So also electric installation to be done not by defendants but plaintiffs. One can understand that a landlord's permission is required for the purpose of effecting any structural changes in the premises. However, it does not stand to any reason whatsoever as to why the landlord would spend for the business of tenant. These clauses therefore conclusively establish that the agreement between parties was not intended to create any tenancy but the defendants were to conduct business of the plaintiffs.

10. Learned trial Court has considered in detail the terms of agreement and has recorded correct findings that the dominant purpose of agreement is for running of business and not to let out the premises. Appellate Court however misdirected itself in appreciating case sought to

be made out by Plaintiffs and admitted evidence on record.

11. The first Appellate Court has placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Natraj Studios (P) Ltd*** (cited supra) to draw conclusion in favour of defendants. Perusal of the said judgment indicates that the issue involved before the Hon'ble Supreme Court therein was as to whether a premises which is a business premises and let out along with machinery can be considered as a premises under Section 5(8-A) of the Rent Act. The Hon'ble Supreme Court has answered the said question in affirmative. In the said case however no specific case seems to have been made out that the agreement is about conducting running business by one person on behalf of another. It did not fall for consideration by the Court to determine dominant purpose or intention of the parties, in entering into the agreement.

12. As far the judgment of the Full Bench of Andhra Pradesh High Court is concerned, the said judgment is passed in a reference where the reference was on the point as to "Whether a lessee of a cinema theater is a tenant, and not liable to be evicted otherwise than under the Act". There cannot be any dispute about the general law that the lessee of the cinema theater can be tenant. The question arises herein is as to whether the parties intended to create a lease or a running business was given for the purpose of conducting the same to the defendants. This

judgment therefore has no application to the present case since these are altogether on different footings.

13. Though otherwise no error could have been found with the first Appellate Court holding that in case where there is a lease of a building along with machinery or premises used for the purpose of business, such premises is covered under the provisions of the Rent Act. However, such finding is not appropriate in the facts and circumstances as they exist in the instance case.

14. First Appellate Court was required to consider pleadings and the terms of agreement between the parties and to cull out the intention from terms of the agreement. Apparently the first Appellate Court has committed error in interpreting the said agreements. As such the judgment of the first Appellate Court cannot sustain. The substantial questions of law noted above are answered in affirmative. The judgment and decree passed by the first Appellate Court is set aside. The judgment and decree passed by the trial Court stands restored.

15. After pronouncement of this order, learned counsel for the respondent/ original defendants seeks stay to this order for a period of six weeks. Learned counsel for the appellant objects to the same.

16. Appellate Court had dismissed suit and the same is decreed

now. The appeal was pending from 1994 and the same is decided today, as such, there is no justification to refuse the request. Hence, this order is stayed for a period of six weeks.

(R. M. JOSHI, J.)

ssp