

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1935 OF 1999

N.m.wadia Charitable Hospital

...Petitioner

Versus

Shri Panchapa Sidhappa Hiremath

(since deceased) through L.Rs.

1a) Rajshekar Panchya Hiremath

and another.

...Respondents

....

Mr.T.D. Deshmukh, Advocate for the Petitioner.

Mr. Pankaj J. Das, Advocate for Respondents No.1a and 1b.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd FEBRUARY, 2019

ORAL JUDGMENT:

1. Heard Mr.T.D. Deshmukh, learned counsel for the petitioner and Mr. Pankaj Das, learned counsel for the respondents No.1a and 1b, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 5.10.1996 passed by the learned Vth Joint Civil Judge, Senior Division, Solapur in Civil Misc. Application No.18/1992 as also the judgment and order dated 8.7.1998 passed by the learned 2nd Additional District Judge, Solapur in Civil Revision Application No.10/1996. By these orders, the Courts below allowed the application filed by the respondent (for short, 'Panchappa') (since deceased) through his L.Rs

for fixation of standard rent in respect of ground and first floor of West-North Corner of Municipal House No.145/6 situate in Railway Line Peth, Solapur (for short, 'suit premises'). The Courts below fixed the standard rent of Rs.700/- per month of the suit premises.

3. At the outset, Mr. Deshmukh submitted that the petitioner is not challenging the fixation of quantum of standard rent. The petitioner is mainly challenging the finding recorded by the Courts below to the effect that Panchappa is a tenant in respect of the suit premises.

4. In support of this Petition, Mr. Deshmukh submitted that the parties entered into agreement on 16.9.1958. He submitted that a perusal of that agreement clearly shows that it is a conducting agreement and in any case Panchappa was inducted as a licensee in the suit premises. In particular, he relied upon clauses (3) and (7) of said agreement. In clause (3) of the agreement, Panchappa agreed that he will hand over possession of the suit premises to the petitioner on or before 31.12.1962. Panchappa also made it clear that he will not claim any right, title or interest in the suit premises. Clause (7) provided that Panchappa will look after the day to day business of hotel and the representative of the petitioner is at liberty to inspect the suit premises subject to giving fair and reasonable notice in advance.

5. Mr. Deshmukh submitted that the Courts below committed serious error in holding that the real intention between the parties was to give the suit premises on lease basis and not on conducting basis. In fact, the Appellate Court did not deal with any of the clauses of the agreement and merely relied upon the letter dated 9.12.1975 at Exhibit-69 while coming to conclusion that Panchappa is a tenant in respect of the suit premises. He submitted that the receipts at Exhibits-51 to 58 show that the petitioner was charging Rs.700/- towards conducting charges to Panchappa and not towards rent of the suit premises. The Courts below have ignored the agreement dated 16.9.1958 as also Exhibits-51 to 58 while holding that Panchappa is a tenant in the suit premises. He, therefore, submitted that the finding recorded by the Courts below that Panchappa is a tenant of the suit premises deserves to be set aside.

6. On the other hand, Mr. Das supported the impugned orders. He submitted that Panchappa was inducted in the suit premises on the ground-floor in the year 1957. Apart from the suit premises Panchappa claimed to have taken godown in the year 1957 on monthly rent of Rs.20/-. Said godown is used by the petitioner for the purpose of collection of bills. In lieu of this premises, the petitioner was given alternate accommodation for godown. He submitted that after

appreciating evidence on record, the Courts below have concurrently held that Panchappa was inducted as a tenant in the suit premises and not on conducting basis. He, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. On one hand, the petitioner claims that Panchappa was inducted as a conductor in the suit premises on the basis of the agreement dated 16.9.1958 and on the other Panchappa claims that he was inducted as a tenant in the suit premises. The question that falls for consideration in the present case is about interpretation of the agreement dated 16.9.1958 so as to find out intention of the parties in entering into this agreement coupled with the surrounding circumstances.

8. Mr. Deshmukh relied upon clauses (3) and (7) of the agreement. A perusal of clause (2) thereof shows that Panchappa was given ground floor on 15.12.1957 for running a hotel. He was given first floor on 15.9.1958. Clause (3) records that the tenure of the agreement was upto 6.10.1962 and mutually it was extended to 31.12.1962. Panchappa agreed to hand over possession of the suit premises to the petitioner without any excuses and that he will not

claim any right, title or interest in the suit premises. Clause (4) thereof records that if Panchappa voluntarily surrenders possession prior to 31.12.1962 or is asked to surrender the possession, the petitioner will refund Rs.5460/- and after refund of that amount his right to carry out business of hotel will stand extinguished and he will not make any complaint. Clause (5) thereof records that Panchappa is running business in the name and style as “Hotel Arogya Niwas” and that some furniture belonging to him lies in the suit premises. While surrendering possession he will remove the furniture. He will pay the taxes for running hotel as also he will take licences in his name. Clause (7) thereof recorded that he will look after the day to day business of the hotel and the representative of the petitioner is free to inspect the premises after giving fair and reasonable notice.

9. The petitioner claims that this is a conducting agreement and Panchappa claims that it is a tenancy agreement. If at all this is a conducting agreement as claimed by the petitioner, I do not find any good reason to permit Panchappa to obtain licenses in his name. If Panchappa was inducted as only a conductor in the suit premises one will expect him sharing some percentage of profit with the petitioner as he is conducting the business for and on behalf of the petitioner. Apart from that the licenses for running the hotel will be taken in the name of

the petitioner and not in the name of Panchappa. Be that as it may, a perusal of the letter dated 9.12.1975 at Exhibit-69 shows that it is signed by the Honorary Secretary of the petitioner. Reference is made to resolution No.5 dated 18.11.1975 in the meeting of the office bearers of the petitioner and rent of Rs.700/- per month was fixed.

10. The learned trial Judge has considered this document Exhibit-69 in paragraphs-11 and 12 of the impugned order. In paragraph-11, the learned trial Judge noted submission of Panchappa. Panchappa contended that all the furnitures and articles belong to him. He is in exclusive possession of the suit premises. In paragraph-12, the learned trial Judge observed that he found much force in the submission advanced on behalf of Panchappa. It was further observed that it is not the case of the petitioner that at the time when the suit premises have been let out to Panchappa, the furnitures and utensils have been provided to him for conducting hotel business and that the petitioner is in exclusive possession of those articles. Merely because it is mentioned in Exhibits-51 to 53 that Rs.700/- have been accepted as hotel conducting charges, that is not sufficient to hold that Panchappa is the licensee of the petitioner. Even in the agreement dated 16.8.1958, it is not specifically mentioned that whatever that would be received by the petitioner would be towards the hotel conducting

charges. After considering the letter at Exhibit-69, the learned trial Judge observed that there is no explanation from the petitioner's side. It was sought to be contended on behalf of the petitioner that the contents of the letter Exhibit-69 are not proved. I do not find any merit in this submission. The witness of the petitioner was confronted with the letter dated 9.12.1975 at Exhibit-69 during cross-examination. In view thereof as also in view of Order VIII Rule 1-A(4)(a), it cannot be said that the contents of Exhibit-69 were not proved.

11. The learned trial Judge observed in paragraph-13 that intention of the parties reveals that Panchappa is not a licensee but a tenant of the petitioner. The relationship of landlord and tenant exists between the parties.

12. Insofar as the order of the District Court is concerned, the learned District Judge has considered the documents produced at Exhibits 51 to 58 as also the letter dated 9.12.1975 at Exhibit-69. The learned District Judge also noted that Panchappa is paying Municipal Taxes as well as electricity charges of the suit premises. The learned District Judge affirmed the findings of the learned trial Judge.

13. It is also material to note that according to the petitioner the term of the conducting agreement came to an end in the year 1962. Till Panchappa filing application for fixation of standard rent on

20.1.1992, no steps were taken by the petitioner for recovery of possession, save and except issuing notice dated 19.12.1991. In view thereof, I do not find that the Courts below committed any error in passing the impugned orders.

14. The petitioner is not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The petitioner is also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. Rule stands discharged. In the circumstances of the case, there shall be no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)