D. H. MANIAR & ORS.

v.

WAMAN LAXMAN KUDAV

August 24, 1976

[P. N. BHAGWATI, N. L. UNTWALIA AND S. MURTAZA FAZAL ALI, JJ.]

Bombay Rents Hotel and Lodging House Rates Control Act 1947—*Sec.* 15*A*—*Sec.* 5(4*A*)—*Indian Easements Act* 1882—*Sec.* 52—62(*c*)—*Revocation of licence by efflux of time—Presidency Small Causes Courts Act* 1882—*Sec.* 47—*Effect of filing of application for eviction—Meaning of licence under a subsisting agreement—Interpretation of Statutes—Practice.*

The appellants granted a licence in respect of certain shop premises in Bombay to the respondent under a Leave and Licence Agreement which expired on 31st March 1966. Thereafter the appellants served a notice upon the respondent calling upon him to remove himself from the premises. The respondent refused to do so. In July 1967 the appellants filed on application for eviction under Section 41 of the Presidency Small Causes Court Act. The contention of the respondent that he was a tenant was negatived by the Small Causes Court, Bombay. The respondent approached the High Court under Article 227 of the Constitution. The High Court refused to interfere with the finding of the Small Causes Court that the respondent was a licensee and not a tenant.

The Bombay Rent Act was amended by Maharashtra Act 17 of 1973. By the amending Act, section 5(4A) and Section 15A were introduced in the parent Act to confer on the licensee, who had a subsisting agreement on February 1, 1973, the status and protection of a tenant under the Bombay Rent Act.

The respondent by an amendment took the plea of protection under the Maharashtra Amendment Act 17 of 1973 on the ground that he was in occupation of the premises on 1st February 1973 under a subsisting agreement for licence. The Small Causes Court, Bombay, negatived the plea on the ground that there was no subsisting agreement for licence on the 1st of February, 1973 as there was nothing on record to show that after 31st March 1966 the leave and licence agreement between the parties was renewed or any fresh agreement was entered into.

The respondent filed a revision petition under section 115 of C.P.C. in the High Court. The High Court allowed the revision on the ground that the licence was not put an end to by the appellants and that in any event by filing the application for eviction the appellant licensor had granted an implied licence to the respondent licensee to continue in possession till a decree of eviction was passed in his favour.

Allowing the appeal,

HELD : (a) In order to get the advantage of section 15A of the Bombay Rent Act, the occupant must be in occupation of the premises as a licensee as defined in section 5(4A) on the 1st of February 1973. If he be such a licensee, the non-obstante clause of section 15A(1) gives him the status and protection of a tenant in spite of there being anything to the contrary in any other law or in any contract. But if he is not a licensee under a subsisting agreement on the 1st of February 1973, then he does not get the advantage of the amended provision of the Bombay Rent Act. [407 H, 408 A]

(b) A person continuing in possession of the premises after termination, withdrawal or revocation of the licence continues to occupy it is a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such a person cannot be called a licensee at all. [408 B]

(c) A person continuing in occupation of such premises after revocation of the licence is still liable to pay compensation or damages for their use and occupation. [408 E]

A (d) Filing an application under section 41 of the Presidency Small Causes Court Act may in certain circumstances have the effect of puting an end to the licence if it was subsisting on the date of its filing. But, that cannot possibly have the effect of reviving the licence as opined by the learned Judge. Such a proposition of law is both novel and incomprehensible. [408H, 409 G]

(e) It is right that the Court should act in consonance with the spirit of the Maharashtra Amending Act 17 of 1973. But the Court cannot and should not cast the law to the winds or twist or stretch it to a breaking point amounting to B almost an absurdity. [410 C]

(f) The finding of the High Court that the respondent was in occupation of the premises under a subsisting licence was wholly wrong and suffered from serious infirmities of law and fact and deserved to be set aside. [410 G]

[The Supreme Court is loathe to pass any harsh or unpalatable remarks concerning the judgment of the High Court and ought to act with restraint. But C sometimes constraint outweighs restraint and compels this Court in discharge of its duty to make strong observations when it finds the judgment of the High Court running galore with the gross and palpable mistakes of law almost amounting to judicial imbalance in the approach to the case].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 212 of 1976.

(From the Judgment and Order dated 18-2-1975 of the Bombay D High Court in Civil Revision Appln. No. 741/74).

Soli J. Sorabji, P. H. Parekh, Miss Manju Jetly and *M/s Dharia & D. D. Kapadia'* for the appellant.

B. K. Desai, S. S. Khanduja and *Vijay Gandotra* for the respondent.

P. H. Parekh for the Intervener.

E The Judgment of the Court was delivered by

UNTWALIA, J. The appellants in this appeal by special leave had filed an application under section 41 of The Presidency Small Cause Courts Act, 1882—hereinafter referred to as the S.C.C. Act, against the respondent to compel him to quit and deliver up the possession of the premises in question. The Small Cause Court made F an order in favour of the appellants under section 43 of the S.C.C. Act. On the filing of an application in revision by the respondent in the Bombay High Court, a learned single Judge of that Court has set aside the order of the Small Cause Court and dismissed the appellants' application for eviction of the respondent. Hence this appeal.

G This Court does, as it ought to, act with restraint and is loathe to pass any harsh or unpalatable remark concerning the judgment of a High Court. But sometimes constraint outweighs restraint and compels this Court in discharge of its duty to make some strong observations when it finds the judgment of the High Court running galore with gross and palpable mistakes of law almost amounting to judicial imbalance in the approach to the case. We regret to say H that this is one such case.

The appellants had allowed the respondent to occupy the shop premises in question which are situated outside Swadeshi Market,

Kalbadevi Road in Bombay under certain agreements of leave and licence which were renewed from time to time. The last agreement was dated April 30, 1965. Duration of the period of licence mentioned in this agreement was in the following terms :

> "(1) This agreement shall be deemed to have commenced from 1st May 1965 and shall remain in force for 11 months and will automatically come to an end on 31st March, 1966 on which day the Party of the Second Part shall remove himself from the premises of his own accord with all his articles and belongings and in event of the Party of the Second Part not clearing out of the premises on the said day viz., 31st March, 1966 the parties of the First Part shall be at liberty to remove the goods and articles of the party of the Second Part by themselves, by employment of labour at the cost and on account of the party of the Second Part and shall be entitled to stop and prevent the Party of the Second Part from entering the premises and making use of the same by himself or his agent."

The respondent did not vacate and remove himself from the premises as per the aforesaid term of the agreement. He purported to claim to be a tenant of the premises and with that end in view his Advocate wrote a letter to appellant No. 1 on May 23, 1966 stating therein that the respondent was a tenant of the shop premises and had remitted the rent for the months of March and April, 1976. A reply to the letter aforesaid of the respondent's advocate was given on behalf of the appellants on June 14, 1966 refuting therein the respondent's claim of being a tenant of the shop premises and asserting that he was a mere licensee. It was also said that the said licence had automatically come to an end on March 31, 1966 and thereafter he was "no better than a trespasser". Subsequent correspondence followed between the parties in which the appellants showed their readiness and willingness to accept money from the respondent by way of compensation for the use and occupation of the shop premises without prejudice to their rights and threatening to take legal action for getting the possession of the premises.

On the 10th July, 1967 the appellants filed an application under section 41 of the S.C.C. Act. The respondent contested that application, *inter-alia,* on the ground that he was a tenant of the shop premises and was, therefore, protected against the eviction under The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for brevity, the Bombay Rent Act). As per the requirement of section 42A of the S.C.C. Act, the question whether the respondent was a tenant of the appellants was tried as a preliminary issue by the Small Cause Court, Bombay. A single Judge of that Court by his judgment and order dated June 30, 1972 held against the respondent and found that he was not a tenant of the appellants *in* respect of the shop premises. An appeal was taken by the respondent to a Bench of two judges of the Small Cause Court under section

A 42A(2) of the S.C.C. Act. By a reasoned order dated December 11, 1972 the appellate Bench upheld the finding of the single Judge and summarily dismissed the appeal. The respondent filed a writ application in the High Court which after hearing the appellants was dismissed on July 3, 1973.

The Bombay Rent Act was amended by Maharashtra Act 17 of B 1973. By the amending Act, section 5(4A) and Section 15A were introduced in the parent Act to confer on the licensee, who had a subsisting agreement on February 1, 1973 the status and protection of a tenant under the Bombay Rent Act. The respondent, thereafter, by an amendment of his written defence filed in the Small Cause Court proceeded to take the additional plea of protection under Maharashtra Act 17 of 1973. Although the amendment was C not fully and effectively allowed by the Small Cause Court Judge, the parties had proceeded on the footing that such a plea became available to the respondent.

A learned single Judge of the Small Cause Court held that there was no subsisting agreement for licence on the 1st of February, 1973 as there was nothing on record to show that after 31st March, 1966 D the leave and licence agreement between the parties was renewed or any fresh agreement was entered into. In that view of the matter the Trial Court held that the respondent was not entitled to the protection of the Bombay Rent Act conferred on a licensee by Maharashtra Act 17 of 1973. The Court allowed the appellants' application and made an order under section 43 of the S.C.C. Act directing the respondent to vacate and hand over peaceful possession E of the premises to the appellants within one month from the date of the order *i.e.* the 11th October, 1974. This order was not appealable. Hence respondent filed a revision before the High Court. A learned single Judge of the High Court by his judgment and order dated February 18, 1975 allowed the revision and, as stated above, set aside the order of the Small Cause Court and dismissed the appellants' application for eviction of the respondent.

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Mr. Sorabji, learned counsel for the appellants after drawing our attention to the relevant facts and the law involved in the case placed the judgment of the High Court to point out the glaring errors committed by it which were writ large on its face. Mr. Desai appearing for the respondent made a strenuous effect to persuade us to uphold the judgment of the High Court. But in the circumstances of the G case he could do no better than what has been said in the judgment.

Section 52 of The Indian Easements Act, 1882 defines "licence" thus :

> "Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, H in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."

It was no longer open to debate that the respondent was a mere licensee of the shop premises of which the appellants were the licensors. Section 62(c) of the Easements Act says :

"A license is deemed to be revoked —

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;"

By efflux of time, therefore, the licence stood revoked on the 1st of April, 1966. Yet the licensee under section 63 of the Easements Act was entitled to a reasonable time to leave the property and to remove his goods which he had been allowed to place on such property. In spite of being asked by the appellants to do so the respondent did not pay any heed. Hence the appellants took recourse to section 41 of the S.C.C. Act. The remedy of section 41 is available only after the permission or the licence granted to the licensee to go on the property has been withdrawn or revoked. If the occupant of the property is not able to show any sufficient cause then order for possession follows under section 43.

We now proceed to quote the relevant words of section 5(4A) of the Bombay Rent Act :

" "Licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge....."

The inclusive clauses thereafter in the definition of the 'licensee' do not include a licensee in occupation of the premises whose licence already come to an end and in such a case the occupant would not be a licensee under a subsisting agreement. We now proceed to read section 15A :

"(1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee, he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.

(2) ....."

It is thus clear beyond doubt that in order to get the advantage of section 15A of the Bombay Rent Act, the occupant must be in occupation of the premises as a licensee as defined in section 5(4A) on the 1st of February, 1973. If he be such a licensee, the non-obstante clause

A of section 15A(1) gives him the status and protection of a tenant in spite of there being anything to the contrary in any other law or in any contract. In other words, even as against the express terms of the subsisting contract of licence the licensee would enjoy the benefits of section 15A. But if he is not a licensee under a subsisting agreement on the 1st of February, 1973, then he does not get the advantage of the amended provision of the Bombay Rent Act. A person continuing in B possession of the premises after termination, withdrawal or revocation of the licence continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such a person by no stretch of imagination can be called a licensee. If therefore, the respondent was not a licensee under a subsisting agreement in occupation of the premises on the 1st of February, 1973 he could not take shelter under section 15A of the Bombay Rent Act. The C Trial Judge found against him. Apart from the position that this was essentially a question of fact and a finding on which could not be interfered with by the High Court in exercise of its revisional power under section 115 of the Code of Civil Procedure, the High Court has done so, as we shall point out, by committing such gross errors of law and fact that we were constrained in the beginning of our judgment, though very reluctantly, to make some strong observations against the judgment D of the High Court.

While reciting the facts of the case the learned Judge of the High Court states a fact in paragraph three of the judgment that the respondent was ordered to deposit in Court Rs. 29/- per month which he did. We are happy to note that the learned Judge has rightly not rested his judgment on this ground of deposit of rent by the respondent. There E was nothing to show in the records of this case that the appellants had ever accepted any money either in or outside court from the respondent after 31st of March, 1966 by way of any rent of the licenced premises. A person continuing in occupation of such premises after revocation of the licence is still liable to pay compensation or damages for their use and occupation. If at any time such compensation had been paid or accepted it could not undo the effect of the revocation of the licence. F

In the seventh paragraph of the judgment the learned Judge says :

> "In my judgment the filing of the proceeding under section 41 without terminating the licence and/or the permission granted to the petitioner does not automatically put an end to the licence which the petitioner had to occupy the pre- G mises."

There are two infirmities in the said observation. Firstly, according to the appellants' case the licence stood revoked and withdrawn and then they filed the application under section 41 of the S.C.C. Act. Secondly, H the filing of the application itself may in certain circumstances have the effect of putting an end to the licence if it was subsisting on the date of its filing. But in any event, one thing is certain, that cannot have the effect of reviving the licence as opined by the learned Judge in the subsequent part of his judgment.

In the tenth paragraph of his judgment the learned Judge says : A

> "The respondents have not relied on any notice served on the petitioner to show that they would treat the petitioner as a trespasser from March 31, 1966. The respondents did not even describe the petitioner as a trespasser in proceedings. It must be therefore presumed that the respondents voluntarily or involuntarily permitted the petitioner to occupy the premises till they filed their application under section 41 of the Presidency Small Cause Courts Act." B

In the next paragraph the learned Judge quotes the words : "position not better than that of a trespasser" from the appellants' letter written so the respondent. The contradiction in the judgment is apparent. It is difficult to understand the significance of the observation "that the respondents voluntarily or involuntarily permitted the petitioner to occupy the premises". Voluntary permission may amount to a fresh licence. The use of the expression 'involuntarily permitted' is a contradiction in terms. C

We are distressed to find the learned Judge repeatedly expressing a view in his judgment that the conduct on the part of the appellants in allowing the respondent to continue in the occupation of the premises D until the filing of the application under section 41 of the S.C.C. Act on July 10, 1967 amounted to a grant of fresh licence. It is not necessary to extract all the strange passages from the judgment of the High Court. But we shall do a few more. In the fifteenth paragraph while referring to the expression "deemed to be revoked" occurring in section 62(c) of the Easements Act it is said that "it does not necessarily mean that E it is in fact revoked." The mistake is so obvious in this observation that it does not require any elaboration. In the same fifteenth paragraph occurs a passage which we exercised in vain to understand. It runs thus :

> "The fact that the respondents did not take any steps till they filed the application under section 41 which also would not automatically make the petitioner's occupation unlawful means that the respondents impliedly granted a licence to the petitioner to continue to occupy the premises."

Later on the learned Judge has said in his judgment that by adopting the procedure of filing the application under section 41 of the S.C.C. G Act, the appellants impliedly granted to the respondent "a right to continue to occupy the premises till he was evicted by an order under section 43." Such a novel proposition of law is beyond our comprehension. If the filing of the application under section 41 gives a right to the occupant of the premises to continue to occupy it, then how can the Court pass an order of eviction under Section 43 in derogation or destruction of such a right ? The resulting position is too anomalous and H illogical to merit any detailed discussion.

In the eighteenth paragraph of the judgment the learned Judge persuaded himself to say :

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> "The fact that the earlier agreement of licence expired on March 31, 1966, does not necessarily mean that there was no subsisting agreement on the date on which the application under section 41 was made or on February 1, 1973."

It is difficult to understand what further act, conduct or writing of the appellants led to the undoing of the effect of the expiration of the earlier B agreement of licence and bring about any subsisting agreement either on the date of the application under section 41 or on February 1, 1973. We admit that if any such agreement could be culled out, in writing or oral, expressly or impliedly, by the action or the conduct of the appellants the Court would have been happy to cull out such agreement and give protection to the licensee in consonance with the spirit of the Amending Act viz. Maharashtra Act 17 of 1973. But the Court cannot C and should not cast the law to the winds or twist or stretch it to a breaking point amounting to almost an absurdity. Our observation is amply demonstrated by the following passage in the judgment of the High Court.

D

> "Relying on the amendment of the Bombay Rent Act the respondents no doubt had withdrawn their permission under the agreements but by filing the proceedings under section 41 they permitted the petitioner to continue as the licensee as stated above; and this itself is a different kind of agreement of licence as defined under section 52 of the Easement Act."

The learned Judge also seems to be making a difference between the filing of a suit against a licensee whose licence has been terminated treating him as a trespasser and an application under section 41 of the S.C.C. E Act. For the purpose of the point at issue the distinction is more illusory than real. Two remedies, previously, were available to the licensor. He could avail the one or the other. The scope of the trial, disposal and further remedies in the two proceedings were different. But it is wholly wrong to say that if a licensor filed an application under F section 41 of the S.C.C. Act instead of filing a regular civil suit by implication treated the occupant of the premises against whom the S.C.C. application was filed as a subsisting licensee.

In our opinion the judgment of the High Court is wholly wrong and suffers from serious infirmities of law and facts. We accordingly allow this appeal, set aside the judgment and order of the High Court and restore that of the Small Cause Court. The respondent must pay the costs to the appellants in this Court as also in the High Court.

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P.H.P. *Appeal allowed.*