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JAGDISH LAL

v.

PARMA NAND

MARCH 27, 2000

B

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

C

Constitution of India, 1950, Article 136—Appeal against eviction—Tenant had given undertaking before High Court that he would vacate premises by specific date—Failure of tenant to honour the undertaking—Held, Does not affect his right to approach the Supreme Court under Article 136—Can even seek interim stay of eviction—However, Supreme Court would exercise discretion to grant leave to appeal.

Rent Control & Eviction :

D

Haryana Urban (Control of Rent & Eviction) Act, 1973—Section 13—Eviction—Change of user—Change of business from general merchandise to restaurant—Does amount to change in user—However, change of user only temporary and tenant reverted back to original business—Hence, no change of user—Tenant allowed to stay subject to his paying rent at enhanced rate.

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The premises in question was let out to the tenant-appellant for “Maniyari” business (General Merchant & Readymade and cloth Merchant) in which he set up a restaurant serving tea and cold drinks. The Respondent filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 for eviction of the appellant on several grounds, including changing the user of the shop for which it was let out. But, during the pendency of the eviction petition before the Rent Controller, the appellant had reverted back to his original business. The Rent Controller allowed the petition only on the ground of change of user of the shop. Thereafter, the appeal and the subsequent Revision also dismissed. Hence this Appeal.

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The appellant had given an undertaking before the High Court in terms of the judgment that he would vacate the shop in question by a specific date provided he was granted time for that purpose. Therefore, a preliminary objection was raised that the present appeal was not maintainable as the filing of a Special Leave Petition under Article 136 of the Constitution amounts to a breach of the undertaking in the present case.

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On the other hand, it was contended for the appellant that the Rent Controller, the Appellate Authority and the High Court were wrong in ordering the eviction as there was no change of user and the shop was not being used for a purpose other than for which it was let out.

Disposing of the Appeal, the Court

HELD : Per Saghir Ahmed, J.

1. Even if the tenant gives an undertaking in the High Court to vacate the premises, his right to approach this Court under Article 136 of the Constitution is not affected. The tenant would still have a right to approach the higher Court and even seek interim relief of stay of eviction despite the undertaking given by him to vacate the premises. [530-G-H]

P.R. Deshpande v. Maruti Balaram Haibatti, [1998] 6 SCC 507, relied on.

Thacker Hariram Motiram v. Balkrishan Chatrabhu Thacker & Ors., [1989] Supp. 2 SCC 655; *Vidhi Shankar v. Heera Lal*, [1987] Supp. SCC 2000 and *Ramchandra Jai Ram Randive v. Chandanmal Rupchand*, [1987] Supp. SCC 254, referred to.

Per Wadhwa, J. :

There is no gain saying that jurisdiction of this Court cannot be impinged upon. But then the Court has absolute discretion in the matter to grant leave to appeal to it under Article 136 of the Constitution. It cannot be said that, this Court in a petition under Article 136 cannot, while exercising its discretion, examine the circumstances under which undertaking was given - as to whether the petitioner has misled the Court or duped the other party. [537-C-D]

P.R. Deshpande v. Maruti Balaram Haibatti, [1998] 6 SCC 507, referred to.

R.N. Gosain case, [1992] 4 SCC 683, cited.

2. Where the new business started by the tenant in the premises let out to him was an allied business or a business, which was ancillary to the main business, it would not amount to change of user. It is true where a

A premises is let out for commercial purposes, carrying on of a new business
 activity therein would not change the nature of the building and it would
 still remain a commercial building. But that is not enough. Having regard
 to the provisions of the Act and the intendment of the legislature in provid-
 ing that the tenant would not use the premises for a purpose other than for
 B which it was let out, the new business should either have some linkage with
 the original business, which under the agreement of lease the tenant was
 permitted to carry on, or it should be an allied business or ancillary to that
 business. [534-H; 535-A-B]

C 2.1. Where local law provide a specific prohibition in respect of the
 use of the premises under the Rent Legislation and that provision has been
 interpreted in a particular manner by the High Court consistently, it
 would not be proper to disturb the course of decisions by interpreting that
 provision differently. [535-C]

D 2.2. In the instant case, the premises in question was let out to the
 appellant for “*Maniyari*” business (General Merchant & Readymade and
 cloth Merchant) business. The setting up of a restaurant therein and
 serving tea and cold drinks would, in the circumstances of this case,
 amount to change of user within the meaning of Section 13 of the Haryana
 Urban (Control of Rent & Eviction) Act, 1973. The redeeming feature,
 E however, is that the Appellant had reverted back to his original business
 during the pendency of the eviction petition before the Rent Controller
 and for many years now has been carrying on the original business. In
 these circumstances, where the change of business was only for a very
 short period and the appellant, during the pendency of the eviction pro-
 ceedings reverted to the original business which he is carrying on since
 F then, and more particularly because all other grounds, namely, arrears of
 rent, structural alterations made in the premises in question and *bona-fide*
 requirement of the landlord, on which the eviction of the appellant was
 sought, have been negated, the ends of justice would be better served if
 the appellant is allowed to stay in the premises in question as tenant,
 G subject, to his paying rent at the rate of Rs. 1,500 p.m. than the original
 rent of Rs. 600 p.m. [535-D-F]

Rattan Lal v. Asha Rani, [1998] 3 SCC 586; *Mohan Lal v. Jai Bhagwan*,
 [1998] 2 SCC 474 and *Grudial Batra v. Raj Kumar Jain*, [1989] 3 SCC 441 =
 AIR (1989) SC 1841, relied on.

H *Om Prakash v. Parmeshri Dass*, (1984) 1 All India RCJ 241; *Pratap*

Singh v. Ajmer Singh, (1984) 1 RCJ 116 and *Banwari Lal v. Iqbal Singh*, (1980) 2 RCR 119, approved. A

Ram Gopal v. Jai Narain & Ors., [1995] Supp. 4 SCC 648; *Dashrath Baburao Sangale & Ors. v. Kashinath Bhaskar Datta*, [1994] Supp. 1 SCC 504 = AIR (1993) SC 2646 and *Bishamber Dass Kohli (deceased) by Lrs. v. Satya Bhalla (Smt.)*, [1993] 1 SCC 566, referred to. B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2231 of 2000.

From the Judgment and Order dated 25.5.98 of the Punjab & Haryana High Court in C.R. No. 2271 of 1998. C

Dushyant Dave, Haris Beeran, Siddharth Dave and M.K. Dua for the Appellant.

Rakesh Dwivedi, Kailash Vasdev and Satvik Verma for the Respondent. D

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Leave granted.

The appellant is the tenant of the shop in question under a lease dated 21.3.1982 executed by the respondent in his favour, under which the shop was let out for the business of Maniyari [(General Merchant) Readymade & Cloth Merchant] on a monthly rent of Rs.600. On 15th June, 1987, the respondent filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short, the "Act"), for eviction of the appellant on several grounds, including the arrears of rent, structural alteration, *bona fide* need and changing the user of the shop for which it was let out. This application was allowed by the Rent Controller by his order dated 25th March, 1995 only on the ground of change of user of the shop. The other grounds, namely, the grounds relating to arrears of rent, structural alterations and genuine need of the landlord were rejected. The appellate authority before whom an appeal was filed by the present appellant dismissed the appeal by judgment dated 4th April, 1998 and upheld the judgment passed by the Rent Controller. The Revision filed thereafter in the High Court was dismissed on 25th May, 1998. E F G

Learned counsel appearing for the respondent has raised a preliminary objection that since the appellant had given an undertaking before the High H

A Court that he would vacate the shop in question by a specific date provided he was granted time for that purpose, the present appeal is not maintainable. The relevant portion of the High Court judgment which relates to this undertaking is reproduced below:

B “Mr. Goel, learned counsel for the petitioner, states that the petitioner
C be allowed some reasonable time to vacate the premises. He under-
takes on behalf of the petitioner to hand over vacant possession to the
landlord on or before September 1, 1998 and also undertakes to
deposit the arrears of rent, if any, together with future rent within two
weeks from today. In case the petitioner deposits the arrears of rent,
if any, alongwith future rent within two weeks, the ejection order
against him will not be executed till September 1, 1998 in view of
his undertaking.”

D It is contended that since the appellant had furnished an undertaking in
terms of the judgment passed by the High Court, he was bound to vacate the
premises. Since he did not honour the undertaking and instituted the present
E appeal in this Court by filing initially a Special Leave Petition under Article
136 of the Constitution, he cannot be heard in the matter as the filing of the
Special Leave Petition in this Court amounts to a breach of the undertaking
given to the High Court which must be honoured by him and he must be
F directed to vacate the premises in terms of the undertaking. Reliance for this
purpose has been placed by the learned counsel for the respondent on a
decision of this Court in *Thacker Hariram Motiram v. Balkrishan Chatrabhu
Thacker & Ors.*, [1989] Supp 2 SCC 655, in which also an undertaking was
given by the tenant and on that undertaking he was allowed sufficient time to
vacate the premises. It was held that in terms of the undertaking given by him,
he must vacate the premises. We are not prepared to accept this contention.

G The question was examined by this Court in a subsequent decision in
P.R. Deshpande v. Maruti Balaram Haibatti, [1998] 6 SCC 507, in which it
was laid down by a Bench of three Judges of this Court that even if the tenant
gives an undertaking in the High Court to vacate the premises, his right to
H approach this Court under Article 136 of the Constitution is not affected. The
tenant would still have a right to approach the higher court and even seek
interim relief of stay of eviction despite the undertaking given by him to vacate
the premises. This decision, decisively and clearly, has the effect of overruling
the earlier decision in *Thacker Hariram Motiram's* case (supra) as also two
other decisions in *Vidhi Shanker v. Heera Lal*, [1987] Supp. SCC 200 and

in *Ramchandra Jai Ram Randive v. Chandanmal Rupchand*, [1987] Supp. SCC 254. The preliminary objection is accordingly overruled. A

We may now consider the next submission of the learned counsel appearing for the appellant that the Rent Controller, the appellate authority and the High Court were wrong in ordering his eviction from the shop in question on the ground that there was a change of user and that the shop was being used for a purpose other than that for which it was let out. The shop was given to the appellant under the lease deed dated 21.3.1982 which recites that it was let out for the business of "MANIYARI (General Merchant) Readymade & Cloth Merchant". Section 13 of the Act, *inter alia*, provides as under : B

"13(1)..... C

(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied — D

(i)

(ii) that the tenant has after the commencement of the 1949 Act, without the written consent of the landlord, —

(a)

(b) used the building or rented land for a purpose other than that for which it was leased." E

This Section specifically provides that if the Rent Controller is satisfied that the tenant is using the building for a purpose other than that for which it was leased, it would order eviction of the tenant on the application of the landlord. F

Mr. Dushyant Dave, learned Senior Counsel appearing on behalf of the appellant has contended that under Section 2 of the Act, the building is divided into two categories — (i) commercial/non-residential, and (ii) residential. It is contended that if the use of the building purports to change the character of that building from commercial/non-residential to residential or *vice versa*, then alone it can be said that the building was being used for a purpose other than that for which it was let out. He contends that the shop in question was being used for commercial purposes, it continues to be used G
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A for that purpose and its user has not been converted into a 'residential purpose'.

B Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the respondent has contended that since the shop in question was let out for a specific purpose of carrying on the business in General Merchandise and Readymade & Cloth Merchant, the appellants could not legally have used the shop for the purpose of a restaurant or for selling sweetmeat. The shift of business from General Merchandise to Restaurant Business was in itself a serious nuisance on account of the furnace which was ignited for making tea or boiling milk or preparing other eatables, including sweetmeat and, therefore, the terms of the lease deed that the shop could not be used for other purposes, stood violated giving to the landlord a cause of action for seeking appellants' eviction. Categorisation of buildings into commercial and residential is a broad categorisation, but it is the user of the shop which is material for seeking eviction of the tenant. The words of this Section, it is contended, are clear and convey a plain meaning that if the purpose for which the shop was to be used was abandoned and it was put to use for any other purpose, though it may be commercial in nature, the tenant would be liable to be evicted.

E The provisions of the Act, as we shall presently see, have been differently interpreted at different times.

F Mr. Dave referred to a decision of this Court in *Rattan Lal v. Asha Rani*, [1988] 3 SCC 586, in which the shop was let out for grocery business but the tenant started selling books in that shop. The tenant, from a grocer, became a bookseller and it was for this reason that his eviction was sought. But it was held that the change of business does not amount to change of user as contemplated by the Act and, therefore, the tenant was not liable to be evicted. The Court, instead of directing eviction, enhanced the rent of the shop. In *Mohan Lal v. Jai Bhagwan*, [1988] 2 SCC 474, which was also a case under Section 13 of the Act which is presently under our consideration, the shop which was let out for running the business of English Liquor Vend was used for General Merchandise. It was held that it would not amount to change in user. It was further held as under :

H "The business purposes must be adjudged in the light of the purposes of the Rent Act in question which is to control the eviction of tenants therefrom. In the expanding concept of business now-a-days and the

growing concept of departmental stores, we are of the opinion that it cannot be said that there was any change of user in the facts of this case which would attract the mischief of the provisions of Section 13(2)(ii)(b) of the Act. The building was rented for purpose of carrying on a business, using it for another business, it will not in any way impair the utility or damage the building and this business can be conveniently carried on in the said premises. There was no nuisance created.”

In yet another decision in *Grudial Batra v. Raj Kumar Jain*, [1989] 3 SCC 441 = AIR (1989) SC 1841, a similar provision under Section 13(2)(ii)(b) of East Punjab Urban Rent Restriction Act, 1949 came to be considered. The shop was let out for cycle and rickshaw repairing business, but the tenant started the television business. The question which arose before the Court was whether the premises had been used for a purpose other than that for which it had been let out. This Court held that in the circumstances of the case, “the business of selling television sets” which was started by the tenant in that shop cannot be said to be a purpose other than that for which the shop was let out. Reference was also made to the provisions of Section 108(o) of the Transfer of Property Act, 1882 which, *inter alia*, provides as under :

“the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased.”

The words “use the property for a purpose other than that for which it was leased” occurring in this clause mean that the change of business would not bring about change of user as contemplated by this clause.

It will thus be seen that mere change of business does not amount to change of user within the meaning of the Act. The philosophy behind this proposition seems to be that a shop which is meant to be used exclusively for commercial purposes must be used for that purpose. If the tenant has started a business in that shop and that business does not succeed and it does not bring in sufficient monetary returns to enable him to earn his livelihood, he would naturally abandon that business and start a new venture. The new venture may not be the same which was initially carried on. It will be permissible only to a limited extent, that is to say, if the tenant was permitted to sell his goods and the shop was meant as an outlet for the goods manufactured by him elsewhere,

A he cannot start the manufacturing process in the shop itself. It was for this reason that this Court in *Ram Gopal v. Jai Narain & Ors.*, [1995] Supp.4 SCC 648, which again was a case under this Act, held that where a premises were demised for running a shop, the tenant cannot legally instal an "Atta Chakki and Oil Kolhu" on the premises as it would amount to a change of user.

B In *Dashrath Baburao Sangale & Ors. v. Kashimath Bhaskar Data*, [1994] Supp 1 SCC 504 = AIR (1993) SC 2646, an open piece of land was let out for carrying on the business of sugarcane crushing. The tenant used it for selling cloth and readymade clothes. This Court did not interfere with the findings of fact concurrently recorded by the Rent Controller, the Appellate
C Authority and the High Court that there was a change of user as the land let out to the tenant was not being used for the purpose for which it was let out. The tenant was held liable for eviction.

D In *Bishamber Dass Kohli (D) by LRs. v. Satya Bhalla (Smt.)*, [1993] 1 SCC 566, the Court held that if the building was let out solely for residence, but in a part of the building a lawyer's office was established without the written permission of the landlord, it would amount to a change in the user and consequently the tenant would be liable to be evicted.

E The Punjab & Haryana High Court in *Om Prakash v. Parmeshri Dass*, (1984) 1 All India RCJ 241 held that a tenant to whom the shop was let out for carrying on the business as General Merchant and "Kirana" had changed his business and started a tea-stall where he was also selling cold drinks, would be treated to have changed the user and the tenant was liable to eviction. The same High Court in *Pratap Singh v. Ajmer Singh*, (1984) 1 All India RCJ 431
F held that if the shop was let out to the tenant for doing business in "dry fruits and soda water", he could not set up an "oven" and prepare 'pakoras' as it would amount to material and substantial change in user of the shop in question. The High Court followed its own Full Bench decision in *Sikandar Lal v. Amrit Lal*, (1984) 1 RCJ 116. In *Banwari Lal v. Iqbal Singh*, (1980) 2
G RCR 119, the shop portion of the building was let out to the tenant for carrying on the business of "General & Provision Store", but he switched over to the business of selling "stones and marble chips." It was held that since there was a change of user, the tenant was liable to ejection.

H On a consideration of these decisions, it comes out that where the new business started by the tenant in the premises let out to him was an allied business or a business which was ancillary to the main business, it would not

amount to change of user. It is true that where a premises is let out for commercial purposes, carrying on of a new business activity therein would not change the nature of the building and it would still remain a commercial building. But that is not enough. Having regard to the provisions of the Act and the intendment of the Legislature in providing that the tenant would not use the premises for a purpose other than that for which it was let out, the new business should either have some linkage with the original business, which under the agreement of lease the tenant was permitted to carry on, or it should be an allied business or ancillary to that business. Where local laws provide a specific prohibition in respect of the use of the premises under the Rent Legislation and that provision has been interpreted in a particular manner by the High Court consistently, it would not be proper to disturb the course of decisions by interpreting that provision differently.

In the instant case, the premises in question was let out to the appellant for "Maniari" [(General Merchant) Readymade & Cloth Merchant] business. The setting up of a restaurant therein and serving tea and cold drinks would, in the circumstances of this case, amount to change of user within the meaning of Section 13. The redeeming feature, however, is that the appellant has reverted back to his original business during the pendency of the eviction petition before the Rent Controller and for many years now has been carrying on the original business. In these circumstances, where the change of business was only for a very short period and the appellant, during the pendency of the eviction proceedings reverted to the original business which he is carrying on since then, and more particularly because all other grounds, namely, arrears of rent, structural alterations made in the premises in question and *bona fide* requirement of the landlord, on which the eviction of the appellant was sought, have been negated, we feel that the ends of justice would be better served if the appellant is allowed to stay in the premises in question as tenant, subject, however, to his paying rent at the rate of Rs.1,500 p.m. than the original rent of Rs.600 p.m.

The appeal is disposed of in the manner indicated above. There will be no order as to costs.

D.P. WADHWA, J. I agree with the order made by my learned and noble brother Saghir Ahmad, J. However, I wish to add a few words.

In the case of *P.R. Deshpande v. Maruti Balaram Haibatti*, [1988] 6 SCC 507 this Court approved the observations made by the two Judge Bench while referring the issue to the larger bench. These observations are quoted

A in para 7 of the judgment which I reproduce :-

B "Learned Judges who referred this matter have expressed in the reference order that remedy under Article 136 is a constitutional right which cannot be taken away by legislation, much less by invoking the principles of election or estoppel. The following observations made in the reference order are worthy of quotation here :

C "The principle of 'approbate and reprobate' or the law of election which is the basis of the decision in *R.N. Gosain* case [1992] 4 SCC 683 cannot, in our opinion, be applied appropriately to preclude this Court from exercising its jurisdiction under Article 136. The doctrine of election is founded on equitable principle that where a person persuades another one to act in a manner to his prejudice and derives any advantage from that then he cannot turn around and claim that he was not liable to perform his part as it was void. It applies where a vendor or a transferor of property tries to take advantage of his own wrong. This principle cannot, in our opinion, be extended to shut out or preclude a person from invoking the constitutional remedy provided to him under Article 136. The law that there is no estoppel against statute is well settled. Here it is a remedy under the Constitution and no law can be framed much less the principle of election which can stand in the way of the appellant from invoking the constitutional jurisdiction of this Court."

D Then this Court, after referring to certain observations of English Judges, said:-

F "A party to a lis can be asked to give an undertaking to the court if he requires stay of operation of the judgment. It is done on the supposition that the order would remain unchanged. By directing the party to give such an undertaking, no court can scuttle or foreclose a statutory remedy of appeal or revision, much less a constitutional remedy. If the order is reversed or modified by the superior court or even the same court on a review, the undertaking given by the party will automatically cease to operate. Merely because a party has complied with the directions to give an undertaking as a condition for obtaining stay, he cannot be presumed to communicate to the other party that he is thereby giving up his statutory remedies to challenge the order. No doubt he is bound to comply with his undertaking so

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long as the order remains alive and operative. *However, it is open to such superior court to consider whether the operation of the order or judgment challenged before it need be stayed or suspended having regard to the fact that the party concerned has given undertaking in the lower court to abide by the decree or order within the time fixed by that court.*"

(emphasis added)

There is no gainsaying that jurisdiction of this Court under Article 136 of the Constitution cannot be impinged upon. But then the court has absolute discretion in the matter to grant leave to appeal to it under this Article. The judgment in *P.R. Deshpande's* case, in my view, cannot be read as laying down a universal rule that this Court in a petition under Article 136 cannot, while exercising its discretion, examine the circumstances under which undertaking was given – as to whether the petitioner has not misled the court or duped the other party. This Court cannot close its eyes to a solemn undertaking given by a party to the court. Two things come to mind. Take the case where order of eviction has been passed against the tenant. On the request of the tenant the court grants him time to approach the higher court and meanwhile stays the operation of the judgment on undertaking given by the tenant. In the other case the tenant requests the court to grant him time to vacate the premises, which could be for a longer period than the period prescribed for filing the appeal, the court grants time on the tenant giving the usual undertaking. In the latter case it would be a moot question if the court will still exercise its discretion in granting leave to appeal under Article 136 of the Constitution.

S.S.

Appeal disposed of.