A SHAMA PRASHANT RAJE

v.

GANPATRAO AND ORS.

SEPTEMBER 27, 2000

B [G.B. PATTANAIK AND SHIVARAJ V. PATIL, JJ.]

Constitution of India, 1950—Articles 226 & 227—Findings of inferior Tribunal—Interference by High Court—Justification of—Held, the jurisdiction C *of High Court is supervisory and not appellate—However, if the High Court comes to a conclusion that (i) the Tribunal has committed manifest error by mis-construing certain documents; or (ii) that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal; or (iii) the inferior Tribunal has ignored to take into consideration certain relevant materials; or (iv) has taken into consideration* D *certain materials which are not admissible, then it would be fully justified in interfering with the findings of the inferior Tribunal.*

Rent Control and Eviction :

Central Provinces and Berar Letting of Houses and Rent Control Order, E *1949.*

S.13(3) (ii), (iii) and (iv)—Landlord—Application for permission to determine tenancy on the ground of habitual default in payment of rent, subletting and for **bonafide** *personal need—Allowed by Rent Controller—On appeal, Appellate Authority by misreading and misconstruing certain* F *documents, set aside the Order of Rent Controller—Writ petition—Single Judge of High Court by re-appreciating the evidence, setting aside the Order of Appellate Authority—Validity of—Held, High Court fully justified in interfering with and correcting the error in the Order of Appellate Authority—Constitution of India, 1950—Articles 226 and 227.*

G *S.13(3) (iii)—Subletting—Proof of—Held, the two ingredients parting with the possession and some consideration therefore have to be established.*

Words & Phrases

H *"habitually" Meaning and connotation of in the context of S.13 (3) (ii)*

of the Central Provinces and Berar Subletting of Houses and Rent Control Order, 1949. A

Respondent landlord filed an application before the Rent Controller u/s. 13 (3) (ii), (iii) and (iv) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 for determining the tenancy of the appellant *inter alia* on the grounds of habitual default in payment of rent, subletting and for *bonafide* personal need. Accepting the said grounds, the Controller granted permission for determining the tenancy. However, on appeal, the Appellate Authority set aside the findings of the Controller. Aggrieved, respondent landlord filed a writ petition in the High Court. Single Judge of the High Court held that the Appellate Authority erred in setting aside the findings of the Rent Controller and affirmed the order of the Rent Controller. Appellant-tenant unsuccessfully filed an appeal before the Division Bench of the High Court. Hence the present appeal. B C

On behalf of appellant-tenant it was contended that the High Court exceeded its jurisdiction under Articles 226 and 227 of the Constitution *in* interfering with the findings of fact arrived at by the Appellate Authority under the Rent Control Order by re-appreciating the evidence, and therefore, the judgment of the High Court was liable to be set aside; that the conclusion of the High Court that the plea of sub-letting has been established was contrary to the decisions of this Court in as much as to establish sub-letting it must be found that the tenant has parted with the possession of the premises and such possession must be backed by some consideration. D E

On behalf of the respondent-landlord it was contended that since the conclusion of the Appellate Authority was based on mis-construction of certain documents and on mis-reading of relevant materials by a cryptic order without even noticing the detailed reasons given by the Rent Controller, the Single Judge of the High Court was fully justified in interfering with the conclusions of the Appellate Authority. F

Dismissing the appeal, the Court G

HELD: 1.1. Appellate Authority by misreading and misconstruing certain documents set aside the findings of the Rent Controller. High Court was therefore, fully justified in interfering with the conclusion *of the Appellate* Authority and correcting the error of the said Authority. [455-H; 456-A] H

A **1.2 In a proceeding under Articles 226 and 227 of the Constitution, the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. But notwithstanding the same, on a mere perusal of the Order of an inferior Tribunal if the High Court comes to a conclusion that such**
B **Tribunal has committed manifest error by mis-construing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering**
C **with the findings of the inferior Tribunal. [454-D, E, F]**

2. The two questions on which the Tribunal under the Rent Control Order were required to give finding, namely, habitual defaulter and subletting are not pure questions of fact but can be held to be mixed questions of fact and law. Thus, it cannot be held that the High Court exceeded the parameters
D **prescribed for interference with the findings of an inferior Tribunal. [454-H]**

3. Under Clause 13(3) (ii), Rent Controller has to be satisfied that the tenant is habitually in arrears with the rent. The expression "habitually" would obviously connote some act of continuity. In the instant case, it was agreed between the parties that it would be obligatory for the tenant to pay
E **the rent before 10th day of each English Calendar month, and in the event of arrears of rent over 3 months is not paid then the landlord was entitled to give notice and then if the matter is not settled within one month from the date of the notice then the landlord is entitled to terminate the tenancy. This being the position, the fact that the rent for September to November 1984**
F **was paid in December only after the Distress Warrant was issued and that again from December 1984 to March 1985 the rent had not been paid and were not deposited within the 10th of next month, as stipulated in the lease agreement would constitute the tenant to be "habitually" in arrear within the meaning of Section 13(3)(ii) of the Control Order. Thus, the Appellate Authority erred in interfering with the well reasoned conclusion of the Rent**
G **Controller on this score, and the High Court was fully justified in correcting the said error by interfering with the finding of the Appellate Authority.**

[454-H; 455-A-C-D-E]

4. On the question of subletting, there is no dispute with the proposition
H **that the two ingredients namely, parting with the possession and some**

consideration therefor, had to be established. The conclusion of the Appellate Authority on this score was obviously on a mis-construction of the document Exhibit N2 and the High Court, therefore, was entitled to correct the error which was based upon a construction of the aforesaid document. The different Clauses of the lease deed unequivocally indicate that the sum of Rs. 1,500 p.m. was the consideration money for parting with the possession of the premises and allowing the Singer Sewing Machine firm to do business in the premises. Thus, in the instant case, the plea of subletting has been established.

[455-E, F, G, H]

Dipak Banerjee **v.** *Lilabati Chakraborty,* **[1987] 4 SCC 161;** *Jagan Nath (deceased) through Lrs.* **v.** *Chander Bhan and Others,* **[1988] 3 SCC 57;** *Gopal Saran* **v.** *Satyanarayana,* **[1989] SCC 56;** *Delhi Stationers and Printers* **v.** *Rajendra Kumar,* **[1990] 2 SCC 331 and** *United Bank of India* **v.** *Cooks and Kelvey Properties (P) Limited,* **[1994] 5 SCC 9, cited.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5450 of 2000.

From the Judgment and Order dated 7.10.99 of the Bombay High Court in L.P.A. No. 99 of 1998.

M.L. Verma, Ms. Vibha D. Makhija and Sanjay R. Hegde for the Appellant.

V.A. Mohta and Shivaji M. Jadhav for the Respondents.

The Judgment of the Court was delivered by

PATTANAIK, J. Leave granted.

This appeal is by the tenant assailing the order of the learned Single Judge of the Bombay High Court, at Nagpur Bench, as well as the judgment of the Division Bench affirming the same. The Single Judge of the High Court in a Petition under Articles 226 and 227 of the Constitution interfered with the judgment of the Appellate Authority under the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949. The question for consideration is whether in the facts and circumstances of the present case the High Court was justified in interfering with the findings of the Appellate Court under the Control order? The respondent-landlord filed an application before the Rent Controller under Section 13(3) (ii), (iii) and (vi) of the Rent Control Order seeking permission to determine the tenancy of the appellant, *inter alia* on the ground that the tenant is a habitual defaulter and has sub-let the premises

A and further, the landlord needs the premises for *bona fide* use. The Controller, on the basis of the pleadings of the parties formulated five issues and came to the conclusion that the tenant is a habitual defaulter; the tenant has sub-let the premises to the Sewing Machine firm and the need of the landlord is *bona fide*. With these conclusions the Controller granted permission for determining the tenancy of the tenant under Section 13(3) (ii), (iii) and (vi) of
B the Control Order. On an appeal, being carried under Section 21 of the aforesaid order, the Collector and Additional District Magistrate, who is the Appellate Authority, under the Control Order set aside the findings of the Controller on all the three issues and came to hold that the tenant cannot be held to be a habitual defaulter, that the landlord has failed to establish that
C the tenant has sub-let the premises and that the *bona fide* need has vanished as the need indicated in the application being for the business of his son and the son died in the meantime. Consequently, the appeal was allowed and the permission granted by the Controller was set aside. The landlord assailed the legality of the order of the Appellate Authority by filing a Writ Petition in the High Court. The learned Single Judge by judgment dated 26th February, 1998,
D came to the conclusion that the Appellate Authority committed error apparent on the face of the order in setting aside the finding of the Controller on the question of habitual default by taking into consideration that a sum of Rs. 2,000 had been sent by the tenant to the landlord by money order and the said money order was refused. Though the money order form itself do not
E indicate the period for which the money was being sent. The learned Single Judge also came to hold that the default rent for the period September 1984 to November 1984 was paid in December only after the landlord obtained Distress Warrant from the Civil Court and not on his own, and therefore, the conclusion of the Appellate Authority under the Control Order is, on the face of it, erroneous. So far as the finding of sub-letting is concerned, the learned
F Single Judge considered the so-called agreement between the tenant and the Singer/Merit Company, and on construction of the terms of agreement it was found that the agreement though nomenclatured as a consignment dealership, but is nothing but a subletting, particularly when the tenant/respondent stays at Dombivali and it is the company which is in exclusive possession of the
G premises and transacting the business giving the tenant a rent of Rs. 1,500 p.m. terming the same to be commission. With these conclusions the learned Single Judge of the High Court interfered with the order of the Appellate Authority and affirmed the order of the Controller thereby granting permission to the landlord under Clause 13(3) (ii) and (iii) of the Rent Control Order. The tenant being aggrieved by the order of the learned Single Judge, approached
H the Division Bench in appeal when the Division Bench agreed with the

reasonings of the learned Single Judge and did not find any reason to interfere with the same. The Division Bench, however, took into consideration an additional factor that the premises are under lock and key and not being used for 2 to 4 years.

Mr. M.L. Verma, learned senior counsel, appearing for the tenant-appellant vehemently contended that the High Court exceeded its jurisdiction under Articles 226 and 227 of the Constitution in interfering with the findings of fact arrived at by the Appellate Authority under the Control Order by re-appreciating the evidence, and therefore, the judgment of the High Court is liable to be set aside. He also further contended that the conclusion of the High Court that the plea of sub-letting has been established is contrary to the several decisions of this Court in as much as to establish sub-letting it must be found that the tenant has parted with the possession of the premise and such possession must be backed by some consideration. In support of the aforesaid contention the learned counsel placed reliance on the decision of this Court in *Dipak Banerjee* v. *Lilabati Chakraborty,* [1987] 4 Supreme Court Cases 161, *Jagan Nath (deceased) through Lrs.* v. *Chander Bhan and Others,* [1988] 3 Supreme Court Cases 57, *Gopal Saran* v. *Satyanarayana,* [1989] Supreme Court Cases 56, *Delhi Stationers and Printers* v. *Rajendra Kumar,* [1990] 2 Supreme Court Cases 331 and *United Bank of India* v. *Cooks and Kelvey Properties (P) Limited,* [1994] 5 Supreme Court Cases 9. So far as the question of habitual default is concerned, Mr. Verma contends that the rent for the months of September to November 1984 had been paid in December 1984 and Clause 9 of the agreement of tenancy between the appellant and respondent entitles the tenant to pay the rent within one month from the date of the notice received from the landlord, and authorises the landlord to approach the Court of Law if the rent over 3 months is not paid within one month of the notice in question, and this being the position, the Lower Appellate Authority was fully justified in holding that the tenant cannot be said to be a habitual defaulter and the High Court committed serious error in interfering with the said finding. So far as the default in payment of rent for the months of December 84 to March 85 is concerned, Mr. Verma contends that the Lower Appellate Authority was justified in taking into consideration the refusal of the landlord to the two money orders sent, and the High Court, therefore, was in error in interfering with the conclusion on fact of the Appellate Authority under the Control Order by interfering with the same in exercise of its discretionary jurisdiction under Article 226 of the Constitution.

Mr. Mohta, the learned senior counsel appearing for the respondent, on

A the other hand contended, that the parameter for exercise of jurisdiction by the High Court in respect of the orders of an inferior Tribunal is well settled by catena of decisions of this Court. Since the conclusion of the Appellate Authority in the case in hand was based on mis-construction of certain documents and on mis-reading of relevant materials by a cryptic order without even noticing the detailed reasons given by the Controller, the learned Single B Judge of the High Court was fully justified in interfering with the conclusions of the Appellate Authority, and as such, there is no error so far as the orders of the High Court are concerned. According to Mr. Mohta, a bare reading of the judgment of the learned Single Judge would indicate the apparent errors found by the High Court with the Appellate Order of the District Collector, C and therefore, the High Court was well within its jurisdiction in interfering with the same.

In view of the rival submissions we have carefully scrutinised the orders of the Controller, that of the Appellate Authority under the Control Order and the order of the learned Single Judge which has been affirmed by D the Division Bench. Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine E for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by mis-construing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion F arrived at by the inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal. Then again the two questions on which the Tribunal under the Rent Control Order were G required to give finding, namely, habitual defaulter and subletting are not pure questions of fact but can be held to be mixed questions of fact and law. In this view of the matter, on going through the Appellate order passed by the District Collector as well as the order of the learned Single Judge, we are not in a position to hold that the High Court exceeded the parameters prescribed for interference with the findings of an inferior Tribunal. Under Clause 13(3) H (ii) Controller has to be satisfied that the tenant is habitually in arrears with

the rent. The expression "habitually" would obviously connote some act of continuity. Under the Lease Deed dated 8.4.1982 between the landlord and the tenant Clause 4 made it obligatory for the tenant to pay the rent before 10th day of each English Calendar month, and under Clause 9 in the event of arrears of rent over 3 months is not paid then the landlord was entitled to give notice and then if the matter is not settled within one month from the date of the notice then the landlord is entitled to terminate the tenancy. Reading the aforesaid two Clauses it would not be correct, as contended by Mr. Verma, learned senior counsel appearing for the appellant, that under the agreement itself 4 months period has been provided to enable the tenant to pay the rent. If a tenant, notwithstanding the obligation of paying the rent by 10th day of each English calendar month continuously makes a default of paying the rent for the first month by two months thereafter, and pays the rent in similar manner, then he must be held to be habitually in arrear with the rent in question. This being the position, the fact that the rent for September to November 1984 was paid in December only after the Distress Warrant was issued and that again from December 1984 to March 1985 the rent had not been paid and were deposited within the 10th of next month, as stipulated in the lease agreement would constitute the tenant to be habitually in arrear within the meaning of Section 13(3) (ii) of the Control Order. The Appellate Authority under the Control Order was obviously in error in interfering with the well reasoned conclusion of the Controller on this score, and the High Court was fully justified in correcting the said error by interfering with the finding of the lower Appellate Authority on the question of applicability of Section 13(3) (ii) to the case in hand. Similarly, on the question of subletting, there is no dispute with the proposition that the two ingredients; namely, parting with the possession and some consideration therefor, had to be established. The conclusion of the lower Appellate Authority on this score was obviously on a mis-construction of the document Exhibit N2 and the High Court, therefore, was entitled to correct the error which was based upon a construction of the aforesaid document. The different Clauses of the lease deed unequivocally indicate that the sum of Rs. 1,500 p.m. was the consideration money for parting with the possession of the premises and allowing the Singer Sewing Machine firm to do business in the premises.

In the aforesaid premises, we are unable to accept the contention of Mr. Verma, learned senior counsel appearing for the appellant that the High Court committed error in interfering with the finding of the Appellate Authority under the Control Order by way of re-appreciating the evidence. In our considered opinion, the High Court was fully justified in interfering with the

A conclusion of the Appellate Authority and correcting the error of the said Authority, as already stated. In the premises, as aforesaid, this appeal is devoid of any merits and the same is dismissed accordingly. There will be no order as to costs.

S.V.K.I. Appeal dismissed.