A NILESH LAXMICHAND AND ANOTHER

v.

SHANTABEN PURUSHOTTAM KAKAD (SINCE DECEASED) BY LRS

B (Civil Appeal No. 4268 of 2019)

MAY 08, 2019

[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]

Maharashtra Rent Control Act, 1999 – ss.16(1)(c), 16(1)(e) and 16(1)(n) – Respondents-plaintiffs rented out a premises to the appellants-defendants – Appellants took the premises on rent for purpose of carrying out business of book shop – Respondents filed a suit for eviction of the appellants u/ss.16(1)(c), 16(1)(e) and 16(1)(n) of the Act – Respondents' case that in July, 2015, the appellants closed down the business of the bookstore, and since then, the premises was not used for more than six months prior to the suit, for the purpose for it was let out – It was also alleged that appellants also started business of garments and foodstuff at different intervals but the same was closed down – Further, appellants had also sublet the premises to the third party – Trial court found that all three grounds were not made out and suit was dismissed – However, Appellate Court allowed the appeal and in revision, the High Court affirmed the findings of the Appellate Court – On appeal, held: The grounds of illegal subletting and nuisance (foodstuff) taken by the respondents unsustainable – Insofar as ground relating to non-user is concerned, the requirement of s.16(1)(n) of Act need to be satisfied, it has to be established that for a period of six months continuously from 20.04.2006 till the date of institution of the suit, i.e. 20.10.2006 the suit premises were not used by the tenant/appellants without a reasonable ground for the purpose for which it was let out i.e. business of book shop – Besides, under the Shops and Establishments Act, a person having a shop must be registered – In other words, carrying on a shop or establishment, as defined in the Act, without registration, would make it illegal – In the instant case, appellant did not pay any fees for renewal of the registration during the year 2006 – Burden actually is on the landlord to establish the non-user – But since, there was

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no registration for the said period it showed that the appellant could not have lawfully conducted any business in the suit premises – Also, the two courts found the ground of non-user u/s.16(1)(n) of Act established – Therefore, no need to interfere with the judgment of the High Court – Bombay Shops and Establishments Act, 1948.

Dismissing the appeal, the Court

HELD : 1. The following elements must be established under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 - the premises must have been let out for a particular purpose; there must be non-user by the tenant for the purpose; the non-user must be without reasonable cause; the non-user must be for a continuous period of six months immediately preceding the date of the suit. [Para 19] [469-B]

2. The requirement of Section 16(1)(n) will be satisfied if it is established that for a period of six months continuously from 20.04.2006 till the date of institution of the suit i.e. 20.10.2006, the suit premises were not used by the tenant without a reasonable ground for the purpose for which it was let out. Since even the appellants do not have a case that the appellants were carrying on the business in readymade garments or fast food during the period, the only business that the appellants can lay store by, is the business in books. [Para 25] [470-G-H; 471-A-B]

3. Under the Bombay Shops and Establishments Act, 1948 under Section 7(2)(A), a registration certificate shall be valid upto the end of the year for which it is granted. As it stands now, it is valid for a period of twelve months from the date it is granted or renewed. This is after the substitution by Act 25 of 2013. Therefore, the provision, which is relevant, is the previous provision, under which, as noted, the registration certificate would be valid upto the end of the year for which it was granted. Therefore, even going by the registration certificate produced and under the Act, issued on 09.09.2005, it came to an end by the end of the year. The word "year" is defined in Section 2(32) as meaning that "a year commencing first day of January". Thus, even the appellant apparently paid the fees for renewal of the registration only on 09.01.2007. He did not pay any fees for renewal of the registration during the year 2006. On 30.11.2007,

A **no doubt, registration certificate was issued. The result is that during the year 2006, it can be concluded that there was no registration for the business either in books or fast food. [Para 28] [471-F-H; 472-A-B]**

4. This apart, the fact that under the Shops and B **Establishments Act, it is undoubtedly true that a person having a shop must get it registered. In other words, carrying on a shop or establishment, as defined in the Act, without registration, would make it illegal. The fact that there is a registration, however, would not be sufficient to establish that there is use of the premises. In other words, even if a person has registration, that** C **by itself would not mean that the tenant is actually using the premises for the purpose for which it is rented out to him. Actual use of the premises can be established by various other circumstances like electricity bills, payment of wages to employees if there are employees, evidence relating to** D **transactions of the business which is carried on etc. No doubt, the burden actually is on the landlord to establish the non-user. But since, in this case, it would appear that there is no registration for the period, it shows that the appellants could not have lawfully conducted any business in the suit premises. There is, no doubt, the evidence of PW1 also. [Para 29] [472-B-E]**

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5. In the circumstances of the case, having regard to the fact that two courts have found the ground of non-user under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 established and the facts as noted by this Court it is not a fit case to interfere with the judgment of the High Court. [Para 31] F **[472-F-G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4268 of 2019.

From the Judgment and Order dated 24.09.2018 of the High Court of Judicature at Bombay in C.R.A. No. 29 of 2018.

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Mayil Samy K., Nihangam R. Maurya, G. Ananda Selvam, K. Muthu Ganesa Pandian, P. Soma Sundaram, Advs. for the Appellants.

Anirudh Joshi, Mahesh Agarwal, Abhinav Agrawal, Himanshu Satija, E. C. Agrawala, Advs. for the Respondents.

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The Judgment of the Court was delivered by

K. M. JOSEPH, J.

1. This appeal by special leave is directed against the Order dated 24.09.2018 passed by the High Court of Bombay in Civil Revision Application No. 29 of 2018. By the impugned Order, the Revision Application filed by the appellants challenging the Order of the Appellate Bench of the Small Causes Court at Bombay in Appeal No. 19 of 2013 has been dismissed. Thereby the result is that the suit filed by the respondents for eviction of the appellants under Section 16(1)(c), 16(1)(e) and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as 'the Act', for short), has been decreed against the appellants.

2. The original RAE Suit No. 1681 of 2006 was filed by one Shantaben Purushottam Kakad (the respondents in this appeal are the legal representatives of the original aforesaid plaintiff). The rented premises consisted of a shop on the ground floor of the building. The case of the plaintiff, *inter alia*, is as follows (parties will be referred to in the position before the Trial Court):

> The first defendant took the premises on rent for the purpose of carrying out business of bookshop and he, the first defendant, has, since the inception, been carrying on the business of bookshop in the name and style "Chetna Book Store". In about July, 2005, the first defendant suddenly closed down the business of bookstore, and since then, is not using the premises for more than six months prior to the suit, for the purpose for which it was let and that too without reasonable or any cause. It was further stated that the first defendant had sublet the premises to third party. As regards the ground of nuisance, it was stated that the defendants have started business of preparation and sale of foodstuff from the suit premises which does not have suitable layout or ventilation for the same. It is further stated that as a result, there was pollution and smell and smoke and this caused lot of nuisance and annoyance for the plaintiff an old landlady and other occupants of the building. This business is now closed down. It is further stated that the business of garments was also started and closed down and that the defendants have now given the suit premises to someone else. It is, on these allegations, the suit came to be filed.

A 3. A Written Statement came to be filed by the appellants. The first appellant is actually the son of the second appellant. Their case is, *inter alia*, as follows:

> In the year 1971, the second defendant, who is the father of the first defendant, approached the original landlord, the husband
B of the original plaintiff, for taking the suit premises on rent. On finalisation of negotiations, the premises were taken on rent somewhere in the year 1971. At that time, the first defendant was a minor aged five years. The premises were taken for commercial/ business purpose to be carried on by the second defendant but the second defendant, for certain spiritual reason and on the advice
C of the Astrologer, obtained receipt in the name of the first defendant. The rent receipts continued to be issued in the name of the first defendant. After obtaining the building on rent, the second defendant used the rented premises for selling books in the name and style "Chetna Book Store". Second defendant
D obtained necessary licence under The Shops and Establishments Act. The second defendant was not able to get good business and sufficient earnings. He started business of readymade garments for some time. That also did not succeed. Thereafter, he started the business in the name and style "Shree Krishna Food Corner".
E However, though he applied, the Health Department did not issue the licence. The business in fast food was stopped and again the business of selling books and stationery was continued. The case of sub-tenancy was denied, so also the case relating to nuisance."

4. The Trial Court relied upon the deposition of PW1 to find that
F he admitted that he did not know when the tenancy was created, whether any negotiations took place and on what terms and conditions, the tenancy was created. The suit premises, was found to be let out in the year 1971 when the original landlord was looking after the affairs. The court relied upon the deposition of the second defendant as DW1 as to the reasons why the rent receipt came to be issued in the name of the first defendant.
G The registration certificate under The Shops and Establishments Act was found to be in the name of second defendant for the business of book selling and food centre. These are for the period from 1988 to 2003 and for the period from 2006 to 2007. The lack of objection from the original landlord in the year 1971 to the business being carried out by the second defendant, was noted. DW1 has deposed that the first defendant
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was five years old in the year 1971. Relying upon Section 11 of the Indian Contract Act, 1872 and noting reciprocal obligations is a cast on a lessee, tenancy in favour of the minor, was ruled out. From the inception, the second defendant was found to be in exclusive possession without interruption. Tenancy was found to be created in favour of the second defendant, though the rent receipt stands in the name of the first defendant. It was found that defendants proved that second defendant was then using the suit premises for selling books by obtaining license under The Shops and Establishments Act for the year 2006 to 2007 and it was found that it could not be said that defendant was not using the premises for the purpose for which it was let for the continuous period of six months immediately preceding the date of the suit. The Trial court did not find favour with ground of illegal subletting. Regarding the illegal subletting to Mr. Raja, the details were found wanting.

5. As regards ground of nuisance, it was found that the smell and smoke of preparing foodstuff may cause nuisance and annoyance if the same are on a large scale and for a continuous period. There are 16 to 18 shops on the ground floor. The original plaintiff did not enter the witness box. PW1 resided elsewhere and he occasionally visited the premises. No adjoining occupier was examined as witness to support the case of nuisance. The particulars, as to what time in a day the defendants particularly prepared foodstuff and on what scale, etc., was not given. Finding all the three grounds not made out, the suit was dismissed.

6. The Appellate Court refers to the rent receipts in the name of the first defendant and found that nullifies the evidence of DW1 to the effect that the premises was taken in the name of the second defendant since inception. It was, therefore, found that there was no question of induction of the second defendant since inception. The reason regarding creation of tenancy in the name of the first defendant being on the advice of an Astrologer or Numerologist was found unbelievable as no such Astrologer or Numerologist, on whose advice the same was done, was examined. Two letters dated 30.10.2005 and 01.12.2005 written by the defendants were relied upon to conclude that the second defendant had absolute control over the suit premises and that he was in possession of the premises. As regards non-user of the premises, evidence of PW1 showed that in or about 2005, the first defendant suddenly closed down the business and the premises was locked for some time and first non-

A use was commenced in July, 2005. Thereafter, plaintiffs received two letters on 30.10.2005 and 01.12.2005 from the defendants. Under those letters, the second defendant intimated the original plaintiff that there was leakage in the premises causing nuisance and due to which the suit premises have become unwholesome and in a filthy condition. DW1 in his evidence, it was found, has deposed as having run the Chetna Book
B Store for quite a number of years. Then he switched over to business of readymade garments. Thereafter, he started business of Shree Krishna Food Corner. Again, business in Book Centre was started. The Shops and Establishments Act showed that the business was carried on from 1988 to 1990, 1991 to 1993. The license was restricted to that period.
C The subsequent license is for the period from 2006 to 2007. This meant that there was a break in 1993 and business was started again in 2006-2007. During the period 1993 to 2006, other businesses like selling of readymade garments and foodstuff centre was going on at the suit premises. The suit was instituted on 19.10.2006. On the basis of new registration certificate issued on 30.11.2007, the defendants have come
D out with a case that firm by name Chetna Book Centre was being carried out since 2006. It was found that there was a gap of 13 months in between the date of the suit and registration of the new firm. This establishes non-use, it was found.

E 7. The Appellate Court found that the businesses of book stall and foodstuff are diametrically opposite to each other. The former is carried out during the day and later goes till late hours of night. As a result of that it can safely be said that starting of food corner in all probabilities could have resulted in causing nuisance and annoyance to the occupants of the suit building, it was found. The evidence of PW1 was relied on to
F find that he used to take a round of the premises and that he was affected whenever he visited his mother, was found believable and nuisance was found established.

8. Regarding subletting, it was found there was no plea of protected license. The court found that subletting was duly established. Appeal
G was allowed.

9. As stated earlier, the High Court has affirmed the findings of the Appellate Court.

10. In regard to the contention that who was the tenant, it was found that the rent receipt showed that tenant was the first defendant. It
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showed that second defendant had taken the tenancy in the name of first defendant for his benefit. Secondly, it was found that after attaining majority, the first defendant has not rescinded the contract. Once it was found that first defendant was tenant, it was for second defendant to establish in what capacity he was in possession. It was found that second defendant was not in possession prior to 01.02.1973, and therefore, could not claim to be a protected sub-tenancy or protected tenancy.

11. Regarding ground of non-user, the High Court affirmed the findings of the Appellate Court.

12. Regarding nuisance, the High Court relied on the evidence of PW1. Noticing the limitations under Section 115 of Code of Civil Procedure, the Revision was dismissed.

13. We have heard the counsel for the parties.

14. Learned counsel for the appellant would submit that none of the grounds have been made out. First defendant was a minor in 1971. On account of the belief and on the advice of an Astrologer the suit premises were taken on rent in the name of first defendant who was only five years of age. There could not be any tenancy in his favour. Second defendant was managing the business. License was in his name. There was neither illegal sub-tenancy nor nuisance. The case of non-user is also sought to be rebutted. Learned counsel for the respondents supported the Order. He also submitted quite clearly that the case of non-user is clearly established at any rate and he prayed for the rejection of the appeal.

15. As regards the case of nuisance, Section 16(1)(c), *inter alia*, declares that conduct which is a nuisance or annoyance to the adjoining or neighbouring occupier by the tenants or others under him, is the ground for eviction. The nuisance, apparently, is attributed to the period of time when business of fast food was being carried out. We have noticed the findings of the Trial court. The evidence of none of the neighbours, be they any of the shopkeepers in the building itself or otherwise, is forthcoming. Details, as such, thereof are not seen established. The original plaintiff who resided in the same building has not given evidence. The evidence essentially constitutes of the deposition of PW1, the son of the original plaintiff and the complaint in writing. Admittedly, he does not reside in the building. He resides elsewhere. No doubt, his evidence that when he came to visit his mother and he would go around, is relied

A upon to conclude that he has experienced nuisance and that nuisance is established. We would think that having regard to the serious consequences which arise out of ground of nuisance, being established, the facts of this case may not justify eviction of appellants on the said ground. In fact, the High Court has not independently gone into the matter and it has affirmed the findings of the Appellate Forum. These findings, B we have adverted to. We do not think that there was justification for the Appellate court or the High Court to sustain eviction on the ground of nuisance.

16. As regards, the question whether there is subletting, it is necessary to notice the plea relating to subletting. It is to the effect that C defendant no.1 has unlawfully sublet, assigned or transferred to third party for unlawful consideration. It is further alleged that plaintiff's son Anil met the person who confirmed to him that it has been given to him on license basis. It is also stated in paragraph 5 that the defendants have now given the suit premises to someone else. From this, we take it that D the case of subletting is built around the act of putting the third party, who is named as Mr. Raja, in possession. There is no case, as such, set up that there is illegal subletting by defendant no.1 putting defendant no.2 in possession and the allegation is specific, as noted above.

17. Regarding this allegation, we are of the view that the finding, E given by the Trial Court, correctly brings out the position found in fact. The details, as to when Shri Raja was put in possession, as to when Shri Raja was found in possession, whether this possession was exclusive, the purpose for which Shri Raja was using the premises, are neither pleaded nor proved. The alternate case of subletting, apparently set up at the stage of argument, is that there is unlawful subletting to the second F defendant. We have noted the pleading. The pleading of subletting is about subletting to a third party which was rejected by the Trial Court. In the Appellate Court, such subletting is found *qua* the second appellant. Having regard to the facts, beginning with the fact that first appellant was only nearly five years old, the registration was in the name of second G appellant, the nature of the relationship between the appellants, viz., the second appellant is the father of the first appellant and also the case which was pleaded in the suit, we are of the view that finding of illegal subletting cannot be sustained.

18. The remaining ground is a ground relating to non-user. Section H 16(1)(n) of the Maharashtra Rent Control Act, 1999, reads as follows:

"16(1)(n). that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit." A

19. The following elements must be established under Section 16(1)(n) - the premises must have been let out for a particular purpose; B there must be non-user by the tenant for the purpose; the non-user must be without reasonable cause; the non-user must be for a continuous period of six months immediately preceding the date of the suit.

20. Suit in this case was instituted on 20.10.2006. therefore, it is incumbent on the respondents to establish that the premises were not C been used for a continuous period of six months which means from 20.04.2006 till the date of institution of the suit.

21. The pleading of the plaintiff is, it was let out for the purpose of business of book shop. It is further case of the plaintiffs that about in or about 2005, the first appellant suddenly closed down the business in D book store, and since then, till the date of the suit, was not using the suit premises for more than six months. It is also stated, in paragraph 5, that the defendants have started the business of preparation and sale of foodstuffs. As a result of tremendous pollution and smell and smoke, it caused lot of nuisance. Complaints were made and this business was closed. The business of readymade garments was also started and closed E down. This is in short, the pleading of the plaintiff.

22. The defendants, on the other hand, set up the case that on acquiring the premises for the business purpose, i.e., selling of books and stationery, defendant no.2 ran the business for a number of years. Instead of aforesaid business, defendant no.2 started doing business of F readymade garments and he did not succeed. Then he started fast food business and the same also could not be continued because no license was issued for running the same business. He instead started again the business of selling books under the name and style "M/s. Chetna Book Centre" and he continued to do the said business from the suit premises G till date.

23. What stands out from the aforesaid pleadings is that the second defendant, after taking over the premises under the lease, has started the business of selling books. Thereafter, from the pleadings of both the plaintiff and defendants, it is clear that appellant also carried on the H

A business in readymade garments and also, still further, business in fast food. As to when the other businesses were carried on, is not clear from the plaint or written statement.

24. The case sought to be set up before this Court would, however, reveal the following:

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> It is the appellant's that the book stall business was running slow. It was in the year 2005 that the second appellant decided to start new business. It is their case that the business in clothes was closed down immediately after it was started. Thereafter, in 2005, we must indeed find that the business of fast food was
> C started. The fact that the business of fast food was being run, is clearly established by one circumstance and that is the complaint dated 27.10.2005 given regarding conduct of the business of fast food. This is the case of the respondents. Therefore, the fast food was also started and it apparently was closed down. Thereafter,
> D it is to be noticed that according to the appellants, the second appellant started again business of book stall in the name and style as "Chetna Book Corner" in the year 2006 onwards (see Ground 'F' in the Special Leave Petition). It is further stated that as the license was originally renewed in the name of Shree Krishna Fast Food Corner, the Municipal Corporation did not change the
> E name later on and informed the second appellant that it will be changed at the time of renewal. Therefore, it is quite clear that the appellant's case must be taken to be that till 2005, business was been carried out in books from the suit premises. Interestingly, the plaintiff also, in paragraph 3, would state that in or around July 2005, the defendant no.1 suddenly closed down the business of
> F book store. Therefore, it is clear, as day light, and it can be taken as established that the premises was being used for running the book store and it continued, even according to the plaintiff, till July 2005. This is also the stand taken by the appellants, as we have noted. In quick succession, the business in garments was started
> G which was short lived. Equally business in fast food was conducted and the same was also stopped.

25. We must remind ourselves that the requirement of Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 will be satisfied if it is established that for a period of six months continuously from 20.04.2006
H till the date of institution of the suit, the suit premises were not used by

the tenant without a reasonable ground for the purpose for which it was let out. Since even the appellants do not have a case that the appellants were carrying on the business in readymade garments or fast food during the period, the only business that the appellants can lay store by, is the business in books.

26. The contention of the appellants would appear to be that the Appellate Court has proceeded on the basis that the registration was obtained on 30.11.2007. Appellate Court further finds that there is a gap of 13 months from the date of the institution of the suit and the date on which the registration was obtained on 30.11.2007. It is the case of the appellants that what the provision in question requires is that there must be non-user by the tenant for the period of six months immediately and continuously prior to the institution of the suit. The period of 13 months, if calculated from 30.01.2007 backwards, in point of time, would be a period commencing from 30.10.2006. The contention appears to be that the cause of action is the continuous non-user for six months prior to the use. Therefore, the relevant question has not been posed and answered, appears to be the argument of the appellants.

27. Let us consider the registration certificates which have been produced. The registration certificate, under the Bombay Shops and Establishments Act, 1948, is seen to be certified on 9th day of September, 2005. It is in the name of the second appellant. Under the heading "Nature of business", it is stated "Sale of books, Sale of snacks, juice, cold drink and ice cream". The name of the establishment is known as "Chetna Book Centre", "Shree Krishna Food Corner".

28. We can say the date of receipt, as far as 2005 is concerned, is 06.09.2005. Still further, there is a reference to receipt dated 09.01.2007. Under the Bombay Shops and Establishments Act, under Section 7(2)(A), a registration certificate shall be valid upto the end of the year for which it is granted. As it stands now, it is valid for a period of twelve months from the date it is granted or renewed. This is after the substitution by Act 25 of 2013. Therefore, the provision, which is relevant, is the previous provision, under which, as noted, the registration certificate would be valid upto the end of the year for which it was granted. Therefore, even going by the registration certificate produced and under the Act, we would think that as it has been issued on 09.09.2005, it came to an end by the end of the year. The word "year" is defined in Section 2(32) as meaning that "a year commencing first day of January". Thus, even the

A appellant apparently paid the fees for renewal of the registration only on 09.01.2007. He did not pay any fees for renewal of the registration during the year 2006. On 30.11.2007, no doubt, registration certificate was issued. The result is that during the year 2006, it can be concluded that there was no registration for the business either in books or fast food.

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29. This apart, the fact that under the Shops and Establishments Act, it is undoubtedly true that a person having a shop must get it registered. In other words, carrying on a shop or establishment, as defined in the Act, without registration, would make it illegal. The fact that there is a registration, however, would not be sufficient to establish that there C is use of the premises. In other words, even if a person has registration, that by itself would not mean that the tenant is actually using the premises for the purpose for which it is rented out to him. Actual use of the premises can be established by various other circumstances like electricity bills, payment of wages to employees if there are employees, evidence relating D to transactions of the business which is carried on etc. No doubt, the burden actually is on the landlord to establish the non-user. But since, in this case, it would appear that there is no registration for the period, it shows that the appellants could not have lawfully conducted any business in the suit premises. There is, no doubt, the evidence of PW1 also.

E 30. Appellants have attempted to produce additional documents. The document is a notice issued for keeping open the shop on a Monday on 11.09.2006. It is also stated, fine was paid of Rs.4,000/-. We find considerable substance in the contention of the respondent that additional evidence can be admitted only if the grounds of Order 41 Rule 27 are established. We find no merit in the said application. Consequently, it F fails and it is dismissed.

31. We would think that in the circumstances of the case, having regard to the fact that two courts have found the ground of non-user under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 established and the facts as noted by us, particularly in an appeal after G Special Leave, we do not deem it fit to interfere with the judgment of the High Court. The appeal shall stand dismissed.

Ankit Gyan Appeal dismissed.