

CASE NO.:
Appeal (civil) 758 of 2007

PETITIONER:
Shantilal Kesharmal Gandhi

RESPONDENT:
Prabhakar Balkrishna Mahanubhav

DATE OF JUDGMENT: 14/02/2007

BENCH:
A.K. MATHUR & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No. 19367 of 2005)

P.K. BALASUBRAMANYAN, J.

1. Leave granted.
2. Heard learned counsel on both sides.
3. The tenant of a building governed by the Bombay Rent, Hotel & Lodging House Rates Control Act, 1947 (hereinafter referred to as, "the Act") is the appellant before us. The landlord of the building, the respondent, filed a suit for eviction of the tenant under Section 13(1)(a), (c) and (k) of the Act. The landlord pleaded that he had let out the suit premises to the tenant for the purpose of residence and the tenant has used the premises for a purpose different from the one for which it was let by establishing a manufacturing unit therein and has thus contravened Section 108(o) of the Transfer of Property Act and thereby rendered himself liable to be evicted under Section 13(1)(a) of the Act. By installing the machinery and by dumping of the products and the blocking of an 'Ota', the tenant had caused nuisance to the plaintiff and the other occupiers of the same building belonging to the plaintiff and had rendered himself liable to be evicted under Section 13(1)(c) of the Act. He had also failed to use the premises for the purpose for which it was let and since he is not using the premises for the purpose for which it was let, for a continuous period of more than six months immediately before the filing of the suit, he was liable to be evicted under Section 13(1)(k) of the Act. The tenant denied the plea that the building was let out to him solely for a residential purpose. He pleaded that it was let out to him for residential and commercial purposes. He denied the committing of nuisance and also the claim that he had ceased to occupy the premises for a period exceeding six months as contended by the landlord.
4. Evidence was let in by the parties. The tenant got marked the registers of the local authority claiming that the building was shown in the books of the authority as having been let out for residential and commercial purposes. He also examined a clerk in the Pune Municipal Corporation and a Tax Inspector of the Corporation. The landlord in his evidence also stated that taxes were levied on the suit premises by the Pune Municipal Corporation on the basis of it being residential

as well as commercial. The tenant when examined attempted to deny his signature on the reverse of the counterfoil of a rent receipt produced by the landlord and contended that it was not admissible to prove that the premises was let out to him solely for a residential purpose. On the question of nuisance, the landlord let in evidence to show that the tenant had blocked a passage (Ota) used by all the tenants and by dumping his products, was preventing user of the common area by the others. He also deposed that by installing machinery and operating it, nuisance was being caused to the other tenants and neighbours. The trial court, on a consideration of the pleadings and the evidence in the case came to the conclusion that the premises in question consisting of two rooms was let out to the tenant in the year 1977 and there was nothing to show that until 1980-81 any business was carried on by the tenant in the premises. That Court also took note of the fact that the tenant was a school teacher and the rules of conduct disabled him from carrying on any business when he continued to be a teacher. The counter foil of the rent receipt was also relied on. Taking the view that the commercial use of the building was started only from the year 1980-81 and accepting the evidence on the side of the landlord that the original letting was only for the purpose of residence, it came to the conclusion that there was a change of user and the landlord was entitled to an order of eviction in terms of Section 13(1)(a) of the Act read with Section 108(o) of the Transfer of Property Act. Proceeding further, the trial court also held that the tenant had, by using the machinery, by blocking the 'Ota' and by dumping his manufactured products in the common open space, had caused nuisance to the other occupants and hence he was also liable to be evicted under Section 13(1)(c) of the Act. Since the original letting out was for a residential purpose and the tenant was found to have ceased to reside in that premises and was found to be using it only for a commercial purpose, the trial court also held that a decree for eviction was liable to be granted under Section 13(1)(k) of the Act on the basis that the tenant had ceased to occupy the premises for a period exceeding six months within the meaning of Section 13(1)(k) of the Act. A claim made by the landlord on the ground that the tenant had acquired another premises reasonably sufficient for his requirement was negatived. The suit was thus decreed and eviction was ordered on three grounds.

5. The tenant went up in appeal. The lower appellate court on the basis of a cursory reasoning, and without a proper reappraisal of the relevant materials on record, affirmed the finding on change of user. It held that the ground of nuisance set up had rightly been upheld by the trial court. It also affirmed the finding of the trial court on the ground of ceasing of occupation by the tenant for the purpose for which the premises was let. The High Court, when moved under Article 227 of the Constitution of India, saw no ground to interfere with the decision of the two courts below and dismissed the petition. Feeling aggrieved, the tenant has filed this appeal.

6. Learned counsel for the tenant \026 appellant submitted that there has been no proper consideration of the claim of the landlord for eviction under Section

13(1)(a) of the Act on the ground of change of user since it was not established that the original letting of the premises in question was only for the purpose of residence. Learned counsel submitted that the admission of the landlord as PW-1 and the evidence of the clerk and Inspector of the Municipal Corporation and the impact of the registers got produced by him have not properly been considered by the appellate court or by the High Court. He submitted that the finding on the ground of nuisance and ceasing to occupy, would depend upon the purpose for which the building was let and those findings were dependent on the basic question whether the building was let out only for a residential purpose or for the combined use as residence and for commerce. The learned counsel for the landlord, the respondent, met these contentions by pointing out that there was no evidence on the side of the tenant to rebut the evidence produced on behalf of the landlord that the building was let out only for a residential purpose. Learned counsel also submitted that the admissions of the tenant in his evidence and the counterfoil of the rent receipt produced by the landlord would clearly support the finding rendered by the courts below in favour of the landlord. He also submitted that the registers of the local authority did not relate to the year of letting and the year of letting was important in determining the purpose of the lease. He also submitted that the finding of the ground of nuisance was well supported by evidence and there was no reason to interfere with it. Same was the position on the finding of the tenant ceasing to occupy the building for a period exceeding six months.

7. On going through the judgments of the trial court, and the appellate court in the light of the submissions made before us it may be possible to say that there has been a failure on the part of the appellate court to discuss all the relevant materials and to that extent its conclusion is open to challenge. The trial court had considered the relevant aspects and had recorded its conclusions. The appellate court should have made a proper reappraisal of the pleadings and the evidence in the case before coming to an independent conclusion of either affirming the findings of the trial court or of interfering with them. Some items of evidence brought to our notice are not seen discussed by the first appellate court. The first appellate court being the final court of fact and law, should have made a proper examination of the relevant materials. To that extent there may be a point in the submission of learned counsel for the tenant. But then, we may have to reckon with the reasoning of the trial court before we make up our mind on the question of interference with the finding on that aspect.

8. But, we find that even if we interfere with the finding based on which a decree for eviction is granted under Section 13(1)(a) of the Act and direct reconsideration of that aspect by the appellate court, that would be of no serious consequence. Of course, the decree for eviction under Section 13(1)(k) of the Act on the ground of ceasing to occupy, may be affected by it. But, there is a decree for eviction on the ground of the conduct of the tenant which has resulted in causing nuisance and annoyance to the adjoining or neighbouring occupiers of the main building of which the suit premises is a part, in terms of Section 13(1)(c) of the Act and if that part of the

decree does not suffer from any infirmity, there will be no reason to interfere with the decree for eviction as a whole.

9. Counsel for the tenant argued that the relevant finding is based solely on the finding that the premises was originally let out for a residential purpose. We are not in a position to agree. It is true that that aspect was also kept in mind by the court while entering the finding on causing nuisance to neighbours and other occupiers. But, the finding is based on the effect of installation and working of machinery by the tenant, the blocking of an 'Ota' (passage) by putting up a tin sheet partition and the dumping of articles in the passage and in the open space in the premises. These aspects are relevant and the effect of these acts are relevant considerations while entering a finding on nuisance under Section 13(1)(c) of the Act. The argument on whether the photographs relied on by the landlord to prove the dumping, were duly proved does not impress us. Similarly, the attempted explanation of the tenant that the goods did not belong to him but to relatives, has been rightly rejected by the trial court and the appellate court. Therefore, we see no reason to interfere with the decree for eviction under Section 13(1)(c) of the Act.

10. In that view, no useful purpose would be served by directing the appellate court to reconsider the question of eviction under Section 13(1)(a) of the Act, even if the claim thereunder requires to be reconsidered (we do not pronounce on it). The decree for eviction under Section 13(1)(c) of the Act would survive. In such a situation, we see no reason to interfere with the decree for eviction as a whole.

11. Thus, we confirm the decision under appeal and dismiss this appeal. The tenant is given a time of nine months from this date to vacate the premises on his filing the usual undertaking before this Court with a period of three weeks from today. However, there will be no order as to costs.