Maulavi Abdur Rub Firoze Ahmed & Co vs Jay Krishna Arora on 8 October, 1975

Equivalent citations: 1976 AIR 479, 1976 SCR (2) 205, AIR 1976 SUPREME COURT 479, 1975 BB CJ 765, 1976 RENCR 368, 1976 (1) SCC 295, 1976 RENCJ 105, 1976 2 SCR 205

Author: N.L. Untwalia

Bench: N.L. Untwalia, A. Alagiriswami, P.K. Goswami

PETITIONER:
MAULAVI ABDUR RUB FIROZE AHMED & CO.

Vs.

RESPONDENT:
JAY KRISHNA ARORA

DATE OF JUDGMENT08/10/1975

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
ALAGIRISWAMI, A.
GOSWAMI, P.K.

CITATION:
1976 AIR 479 1976 SCR (2) 205
1976 SCC (1) 295

ACT:
West Bengal Premises Tenancy Act 1956-Section 20 and Schedule there-to-Scope regarding jurisdiction vis-a-vis Section 5(2) of the city Civil, Court Act 1953-Landlord's need of the business premises for personal use and occupation for residential purpose is not barred by law.

HEADNOTE:
The plaintiff-respondent obtained a decree in an eviction suit filed u/s 20 of the West Bengal Premises Tenancy Act, 1956 on the original side of the Calcutta High Court on the grounds of "personal use and occupation", which was confirmed by a bench of the High Court. On an appeal by certificate of fitness, the defendant-appellant raised the

following contentions:

(i) That the Civil Court at Calcutta and not the High Court had jurisdiction to try the suit as per section 20 of the West Bengal Premises Tenancy Act 1956.

(ii) That there could be no reasonable requirement of the landlord of the suit premises for residential purposes, as they were being used by the tenant appellant for business purpose. The requirement of the landlord must exist for the same purpose to which the premises were being used by the tenants.

(iii) That in any event the High Court ought to have decreed the suit for eviction from a part of the premises only under section 13(4) of the West Bengal Premises tenancy Act 1956.

Dismissing the appeal, the Court

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HELD : (i) Section 20 is couched in a language which does not determine merely the place of suing but affects the jurisdiction of one court or the other. Triability of the suit by the High Court excludes the triability by the city civil court. [207-D]

(ii) If a suit were to be instituted in a court to which both Section 8 of the Suit Valuation Act 1887 and section 7(xi)(cc) of the Court Fee Act 1870 would apply, the nature of the suit both for the purposes of jurisdiction and court fee will be the amount of rent payable during the preceding 12 months. But on the original civil side of the Calcutta High Court the procedure followed and the law applicable is different. Within the local limits of ordinary Original Civil Jurisdiction of the Calcutta High Court the legislature thought to provide that, if the value of the suit exceeded Rs. 10,000/- it was only entertainable by the High Court at Calcutta. But apart from the value of the suit if the value of the suit premises of which the recovery of possession is claimed exceeds Rs. 10,000/- only the High Court can entertain such a suit. The intention of the legislature is that if the value of the premises exceeds Rs. 10,000/- then irrespective of the value of the suit, the suit can be entertained only by the High Court and not by the City Civil Court. [207F, G-H, 208-A]

(iii) There is no conflict between Section 5(2) of the city civil court and Section 20 of the West Bengal Premises Tenancy Act of 1956 read with its Schedule. The High Court alone has the jurisdiction to try the suit and not the city civil court, in the view, either the value of the suits exceeds Rs. 10,000/-or because of the special provision in the Act when the market value of the premises (not the value of the lease held interest) exceeds Rs. 10,000/- [208 F-G]

(iv) The law does not require the landlord must need the premises for his own occupation only for the purpose to which they were being put by the tenant. It may well be that a tenant cannot put the demised premises to any

206

other use. But there is no bar in law in the way of the landlord requiring the business premises for his residential occupation and vice versa provided the premises are capable of being put to different uses. [309-E]

B. Banerjee v. Smt. Anita Pan, A.I.R. 1975 S.C. 1146, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1937 or 1974.

From the Judgment and Decree dated the 6th August, 1974, of the Calcutta High Court in Appeal from Original Decree No. 21 of 1972.

Purshottam Chattarjee and Rathin Das for the Appellant. Govinda Mukhoty and G. S. Chatterjee for the Respondent.

The Judgment of the Court was delivered by UNTWALIA, J. The defendant appellant in this appeal by certificate of the Calcutta High Court is a firm carrying on business in the town of Calcutta. The plaintiff respondent filed a suit for eviction of the appellant from the first and second floors of the building No. 86, Purshottam Rai Street, Calcutta on the ground that he reasonably required the suit premises for his own use and occupation and that he had no other house in or around Calcutta where he could reside. The suit was instituted on the original side of the Calcutta High Court. It was contested by the appellant on several grounds. The learned Trial Judge decreed the suit. The appellant's appeal was dismissed by a Bench of the High Court. It has come to this Court after obtaining a certificate of fitness from the High Court.

Mr. Purshottam Chatterjee, learned counsel for the appellant urged the following points in support of this appeal:

(1) That the High Court had no jurisdiction to try the suit, Only the City Civil Court at Calcutta had jurisdiction to try it.

(2) That there could be no reasonable requirement of the landlord of the suit premises for residential purpose, as they were being used by the tenant appellant for business purpose.

The requirement of the landlord must exist for the same purpose to which the premises were being used by the tenant.

(3) In any event the High Court ought to have decreed the suit for eviction from a part of the premises only in accordance with section 13(4) of the West Bengal Premises Tenancy Act, 1956-hereinafter called the Act.

The point of jurisdiction of the High Court to try the suit was very strenuously urged and does need our careful consideration. The suit in question was instituted in the Calcutta High Court on the 3rd of October, 1969. After the institution of the suit the Act stood amended by the West Bengal Premises Tenancy (Second Amendment) Act, West Bengal Act 34 of 1969-hereinafter called the Amendment Act. Section 20 of the Act had already been amended by an Amending Act of 1957 (West Bengal Act 27 of 1957). It reads as follows:

> "Notwithstanding anything contained in any other law, a suit or proceeding by a landlord against a tenant in which re-
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> covery of possession of any premises to which this Act applies is claimed shall lie to the Courts, as set out in the Schedule, and no other Court shall be competent to entertain or try such suit or proceeding."

The relevant portion of the Schedule runs as follows:

> (1) Where the premises are situate on land, wholly within the Ordinary Original Civil Jurisdiction of the Calcutta High Court-
>
> (i) Where the value of the suit or the value of premises of which recovery of possession is claimed does not exceed ten thousand rupees-to the City Civil Court as defined in the City Civil Court Act, 1953 (W.B. Act 21 of 1953);
>
> (ii) Where the value of the suit exceeds ten thousand rupees-to the High Court at Calcutta."

Section 20 is couched in a language which does not determine merely the place of suing but affects the jurisdiction of the one court or the other. If under the schedule, the suit is triable by the High Court, the City Civil Court has no jurisdiction to try it. While, on the other hand, if the latter had jurisdiction to try it, the former will have no jurisdiction to do so. The inclusion of the word 'proceeding' in section 20 by the Amending Act of 1957, will not make any difference for the purpose of determination of the point at issue in this case. The schedule, however, does not seem to be happily worded. Yet it is not difficult to spell out the intention of the legislature.

Under section 8 of the Suits Valuation Act, 1887, except in few exceptions mentioned therein, the value of the suit for the purposes of Court fee and jurisdiction is the same. Under section 7 (xi) (cc) of the Court Fees Act, 1870 the amount of Court Fee payable in a suit for the recovery of immovable property from a tenant is on the amount of rent for the suit premises payable for the year next before the date of presenting the plaint. If the suit were to be instituted in a court to which the two acts would apply the value of the suit both for the purposes of jurisdiction and court fee will be the amount of rent payable during the preceding 12 months. But on the Original Civil Side of the Calcutta High Court the procedure followed and the law applicable is different.

In the instant case the rental was about Rs. 110/- per month. On that basis the value of the suit ought to have been Rs. 1320/- only. That being so the suit, according to the contention of the appellant, was entertainable only by the City Civil Court and not by the High Court The argument so presented does not, however, stand scrutiny. Within the local limits of Ordinary Original Civil Jurisdiction of the Calcutta High Court the legislature thought to provide that if the value of the suit exceeded Rs. 10,000/- it was only entertainable by the High Court at Calcutta. If the value was below Rs. 10,000/- the City Civil Court only will have the jurisdiction. But apart from the value of the suit if the value of the suit premises of which the recovery of possession is claimed exceeds Rs. 10,000/- then the City Civil Court will have no jurisdiction to try a suit. Only the High Court can entertain such a suit. The intention of the legislature seems to be that if the value of the premises exceeds Rs. 10,000/- then irrespective of the value of the suit, the suit can be entertained only by the High Court and not by the City Civil Court.

But that apart, we may also rest our judgment on a simple basis. Assuming the plaintiff could have valued his suit at Rs. 1320/- but he chose to value it in accordance with the value of the suit premises, there was nothing in law to compel him to put the lower valuation and not the higher. The value of the suit premises mentioned in the plaint cannot be said to be contrary to law and the plaintiff is not obliged to put the 12 months' rental value. In the instant case the plaintiff asserted in his plaint that the value of the suit premises exceeded Rs. 10,000/-. The defendant asserted in its written statement that the suit was "under valued"; it ought to have been valued at the amount of one year's rent. Perhaps the use of the word "under-valued" is a mistake for the word "over-valued". The statement in the plaint being squarely in accordance with the law and not contrary to it, the High Court was the proper forum for the institution and trial of the suit. The plaint could not be instituted in the City Civil Court.

Mr. Chatterjee also placed reliance upon section 5(2) of the City Civil Court Act, 1953 as stood at the relevant time. It says:

> "Subject to the provisions of sub-sections (3) and (4), and of section 9, the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a civil nature, not exceeding rupees ten thousand in value."

Counsel submitted that according to the said provision of law the City Civil Court alone will have jurisdiction to try a suit of a civil nature the value of which does not exceed Rs. 10,000/-. There is no conflict between section 5(2) of the City Civil Court and section 20 of the Act read with its schedule. In the view which we have expressed above, either the value of the suit exceeds Rs. 10,000/- or because of the special provision in the Act when the market value of the premises (not the value of the lease hold interest) exceeds Rs. 10,000/- the High Court alone has jurisdiction to try such a suit and not the City Civil Court.

Section 13 (1) (f) of the Act as it stood before it was amended by the Amendment Act stated the ground of eviction in clause (f) as follows:

> "Where the premises are reasonably required by the landlord either for purposes of building or re-building or for making thereto substantial additions or alterations or for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held;"

By the Amendment Act with retrospective effect, instead of clause (f) there were brought about two clauses, viz. (f) and (ff). They run as follows:

> "(f) subject to the provision of sub-section (3A) and section 18A, where the premises are reasonably required by the landlord for purposes of building or re-building or for making thereto substantial additions or alterations, and such building or re-building, or additions or alterations, cannot be carried out without the premises being vacated;"

> "(ff) subject to the provisions of sub-section (3A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation."

The constitutional validity of the retrospective operation of the Amendment Act was upheld in the majority decision of this Court in B. Banerjee v. Smt. Anita Pan(1). The High Court has recorded a finding in this case which squarely covers the requirement of clause (ff) introduced by the Amendment Act. The learned Trial Judge has found, which finding was upheld by the High Court, that the respondent not only required the suit premises for his own occupation but was not in possession of any other reasonably suitable accommodation. The law does not require that the landlord must need the premises for his own occupation only for the purpose to which they were being put by the tenant. It may well be that a tenant cannot put the demised premises to any other use. But there is no bar in law in the way of the landlord requiring the business premises for his residential occupation and vice versa, provided the premises are capable of being put to different uses, as they seem to be in this case.

Even apropos the last point urged on behalf of the appellant we find no error in the decision of the High Court. In view of the provision of law contained in sub- section (4) of section 13 of the Act, the High Court has come to the conclusion that it was not a case where the eviction of the tenant could be ordered only from the part of the premises. Having appreciated the facts as they were placed before us by learned counsel for the appellant and Mr. G Mukhoty, learned counsel for the respondent, we agree with the conclusion of the High Court in this regard also.

For the reasons stated above, the appeal fails and is dismissed with costs.

S.R. Appeal dismissed.