

YUVRAJ @ MUNNA PRALHAD JAGDALE & ORS.

v.

JANARDAN SUBAJIRAO WIDE
(Civil Appeal Nos. 2855-2856 of 2011)

MARCH 21, 2023

[SUDHANSHU DHULIA AND SANJAY KUMAR, JJ.]

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 – ss.13(1)(e) and 15 – Eviction under – Plaintiff Nos.1 & 2, the predecessors-in-title of the appellants filed suit for recovery of possession of the leased premises from the tenant – It was their case that the tenant parted with the running of the hotel/premises and possession of the same was given to a third person – Lease deed recorded that business of hotel was the independent business of the tenant and he would not assign the business or transfer the same to any third person – Trial Court decreed suit on the ground of creation of sub-tenancy – Judgment of the trial Court was confirmed in Appellate Court – High Court held that the legal possession remained with the tenant and mere creation of a partnership agreement by the tenant for the purpose of jointly carrying on business in the leased premises would not amount to sub-letting – Decree of eviction/possession was set aside – On appeal, held: Tenant did not stop short at executing the partnership agreement but went on to execute the assignment agreement, whereby he assigned his hotel business in the leased premises to a third person and received earnest money – The very act of execution of this document was sufficient in itself to complete the breach of the lease condition and the statutory mandate u/ss. 13(1)(e) and 15(1) – Therefore, judgment of High Court set aside – Judgment of trial Court and Appellate Court affirmed.

Allowing the appeals and I.As, the Court

HELD 1. The Lease Deed is stated to have recorded unequivocally in page 4 that the business of Hotel is the independent business of the tenant and that he would not assign the business and would not allow third persons to conduct the said business in any way nor would he transfer the said business in any way in favour of a third person. [Para 21][1145-C]

A 2. Given the clear proscription in the lease deed, duly
 endorsed by the explicit language of Sections 13(1)(e) and 15(1)
 of the Act of 1947, the very execution of the assignment agreement
 dated 15.01.1985 (Exh.49), whereby the tenant admittedly
 assigned his business in the leasehold premises in favour of a
 third person for ₹ 2,00,000/- and accepted a sum of ₹ 50,000/- as
 B earnest money, was sufficient in itself to establish transgression
 of the lease condition and the statutory mandate. This court has
 earlier laid down the principle that the mere execution of a
 genuine partnership deed by a tenant, whereby he/she converted
 a sole proprietary concern into a partnership business, while
 C continuing to actively participate in the business and retaining
 control over the tenanted premises wherein the business is being
 run, would not amount to sub-letting. However, that principle
 has no role to play in the case on hand. Tenant did not stop short
 at executing the partnership agreement dated 01.01.1985
 D (Exh.48) but went on to execute the assignment agreement dated
 15.01.1985 (Exh.49), whereby he assigned his hotel business in
 the leased premises to a third person and received earnest money
 also. The very act of execution of this document was sufficient in
 itself to complete the breach of the lease condition and the
 statutory mandate and did not require anything further. [Para
 E 22][1145-E-H]

Parvinder Singh v. Renu Gautam and Others (2004) 4
 SCC 794 : [2004] 1 Suppl. SCR 610; *Mahendra Saree*
Emporium (II) v. G. V. Srinivasa Murthy (2005) 1 SCC
 481 : [2004] 3 Suppl. SCR 931 – referred to.

F

Case Law Reference

[2004] 1 Suppl. SCR 610	referred to	Para 22
[2004] 3 Suppl. SCR 931	referred to	Para 22

G CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2855-
 2856 of 2011.

From the Judgment and Order dated 03.12.2008 of the High Court
 of Bombay in WP No.1067 of 1992 and dated 09.09.2009 in RP No.75
 of 2009.

H With

I.A. Nos. 89837-89838 of 2021 and 38142-38143 of 2023. A

Vinay Navare, Sr. Adv., Ms. Gwen Karthika, Ms. Abha R. Sharma, Advs. for the Appellants.

Sudhanshu S. Choudhari, Adv. for the Respondent.

The Judgment of the Court was delivered by B

SANJAY KUMAR, J.

1. These civil appeals arise out of the judgment dated 03.12.2008 of the Bombay High Court, allowing Writ Petition No. 1067 of 1992, and its later judgment dated 09.09.2009, dismissing Review Petition No. 75 of 2009 in W.P No. 1067 of 1992, respectively. In turn, W.P No. 1067 of 1992 filed by Janardhan Subajirao Wide, the respondent herein, arose out of the judgment dated 21.12.1991 of the learned 13th Additional District Judge, Pune, in Civil Appeal No. 1030 of 1987, confirming the judgment dated 30.09.1987 of the learned II Additional S.C. Judge, Pune, in C.S. No. 386 of 1985. C D

2. C.S. No. 386 of 1985 was filed by late Ramachandra Maruti Jagadale, plaintiff No.2, and his wife, late Sou. Rangubai Jagadale, plaintiff No.1, the predecessors-in-title of the appellants herein, for recovery of possession of the leased premises bearing C.T.S No. 1873 at Bhamburda, Pune, from the tenant, Janardhan Subajirao Wide. By judgment dated 30.09.1987, the Trial Court decreed their suit, holding them entitled to claim eviction of the tenant under Section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for brevity, 'the Act of 1947'). Two months' time was granted to the tenant to vacate the premises. This judgment of the Trial Court was confirmed in appeal by the learned 13th Additional District Judge, Pune, vide judgment dated 21.12.1991. E F

3. It is against these judgments that the tenant, viz., the respondent herein, filed W.P. No. 1067 of 1992 before the Bombay High Court. By its judgment dated 03.12.2008, the High Court opined that a case of sub-tenancy was not made out, warranting eviction of the tenant on that ground, and quashed the decree of eviction/ possession. In consequence, C.S. No. 386 of 1985 was dismissed. Aggrieved thereby, the legal representatives of the deceased plaintiffs, who were on record in the writ petition, filed Review Petition No. 75 of 2009. However, by its judgment dated 09.09.2009, the High Court reiterated its finding that the G H

A tenant had never parted with possession of the leased premises and had never left the premises, being a partner. Holding so, the High Court concluded that there was no error on the face of the record and dismissed the review petition. Presently, these two judgments are under appeal.

4. While so, the tenant, Janardhan Subajirao Wide, the sole
B respondent in these appeals, expired on 16.02.2018. Thereupon, the appellants filed I.A. No. 89838 of 2021 seeking condonation of the delay of 1169 days in taking steps and I.A. No. 89837 of 2021 to set aside the abatement of the appeals and to permit substitution of the legal heirs of the deceased respondent. Notice having been ordered thereon, Mr.
C Sudhanshu S. Choudhari, learned counsel, who had earlier appeared for the deceased respondent, e-filed his vakalatnama/appearance on behalf of the legal representatives on 05.11.2022. No counter was filed by him opposing the applications. Sufficient cause having been shown, delay in taking necessary steps is condoned; abatement of the appeals is set aside; and legal representatives of the deceased sole respondent are
D brought on record. Registry shall make necessary changes in the cause titles in both the appeals before issuing certified copies of this judgment.

5. Heard Mr. Vinay Navare, learned senior counsel, appearing for the appellants; and Mr. Sudhanshu S. Choudhari, learned counsel, appearing for the respondents.

E 6. The leased premises, consisting of two blocks with an approximate area of 455 sq. ft., are situated on the ground floor on the eastern side of the cement-concrete building, bearing C.T.S No. 1873 at Bhamburda, Pune. These premises were let out to the tenant by the original landlord and landlady, the predecessors-in-title of the appellants,
F for the purpose of his hotel business under the name and style of Hotel Ambika. Civil Suit No. 386 of 1985 was filed by the landlord and landlady for eviction of the tenant on two grounds. Their claim was that the tenant carried out unauthorized construction of a toilet in the leased premises, thereby violating the mandate of Section 13(1)(b) of the Act of 1947. It was also their case that the tenant parted with the running of the hotel
G and possession of the leased premises in favour of one Krishna B Shetty, thereby committing breach of Section 13(1)(e) of the Act of 1947. These grounds are borne out by the plaint filed in the suit, which is sought to be placed on record, by way of I.A. No. 38142 of 2023, along with a photocopy of Section 15 of the Act of 1947. I.A. No. 38143 of 2023 was
H filed seeking exemption from filing an official translation of the plaint.

The I.A.s are allowed. The documents are taken on record and exemption, as prayed for, is granted. A

7. The tenant filed a Written Statement denying the suit claims. Thereupon, the Trial Court settled three issues for consideration. The plaintiffs examined three witnesses, including plaintiff No. 2, while the defendant examined himself as DW1. B

8. Plaintiff No. 2, speaking as PW1, stated that the suit premises was leased out to the tenant in the year 1975 for running his hotel business. He asserted that the tenant constructed a toilet in the leased premises in January, 1985, without obtaining his consent and 2-4 days later, he sold his rights in the hotel to Krishna B Shetty for a sum of ₹ 2,00,000/- and accepted ₹ 50,000/- as earnest money. He claimed that Krishna B Shetty was running the hotel in the leased premises thereafter for about eleven months. He further stated that in November, 1985, there was a dispute between the tenant and Krishna B Shetty, which led to the sealing of the premises, and finally the key thereof was handed over by the Sub-Divisional Magistrate to the tenant and, thereafter, Krishna B Shetty did not operate the hotel. C D

9. PW2, the Advocate-Commissioner, stated in her first report (Exh.8) that Krishna B Shetty was in occupation of the leased hotel premises when she visited the same. In her subsequent report (Exh.23), she stated that she found no trace of a toilet constructed in the leased premises. E

10. Krishna B Shetty was examined as PW3. He stated that he intended to purchase the hotel from the tenant and had taken possession in January, 1985. He stated that the price was settled at ₹ 2,00,000/- and he paid ₹ 50,000/- by way of earnest money at the time of execution of the agreement. He asserted that the tenant illegally evicted him from the hotel premises, constraining him to file a complaint and also a suit for specific performance. F

11. The tenant examined himself as DW1. In his examination-in-chief, he claimed that he had not given the hotel business to Krishna B Shetty or anyone else and that Krishna B Shetty was not given possession of the leased premises at any time. However, during his cross-examination, he admitted that he was carrying on hotel business in the leased premises with the name 'Hotel Ambika' and in the year 1984, he thought of admitting a partner to run the hotel. As Krishna B Shetty was G H

- A also in the same business, he stated that he had talks with him about joining the business. He denied that Krishna B Shetty was allowed by him to join as a partner in January, 1985. He, however, admitted his signatures in the partnership agreement executed in that regard (Exh.48) and conceded that his own Advocate had purchased the stamp paper and drafted the said agreement. He denied that Krishna B Shetty performed Satyanarayan Pooja on 07.01.1985, after execution of the partnership agreement, but admitted that the Invitation Card (Exh.44) issued on that occasion bore his name. He also admitted his signatures in the assignment agreement dated 15.01.1985 (Exh.49). He denied that Krishna B Shetty was running the hotel as his own business in his individual capacity and that he forcibly dispossessed him in January, 1986. He admitted that proceedings were initiated under Section 145, Cr.P.C. but asserted that final orders were passed in his favour.

12. Upon consideration of the pleadings and evidence, the Trial Court answered the three issues framed by it as under: -

- | | | | |
|---|-----|--|------|
| D | “1. | It is proved that the deft. has without the plffs. consent given in writing erected on the suit premises any permanent structure. | No |
| E | 2. | It is proved that the deft. has after the date of commencement of the B.R. Act (Amendment Act of 1973) unlawfully given on licence whole or part of the premises or assigned or transferred in any other manner his interest in the suit premises? | Yes |
| F | 3. | If plff. entitled to decree for possession? | Yes” |

13. The Trial Court held against the plaintiffs in so far as the ground under Section 13(1)(b) of the Act of 1947 was concerned, as the Advocate Commissioner’s second report (Exh.23) showed no trace of a toilet having been constructed in the leased premises. However, as regards the ground raised under Section 13(1)(e) of the Act of 1947, the finding was otherwise. The Trial Court took note of the admitted execution of the partnership agreement dated 01.01.1985 (Exh.48), whereby the tenant accepted Krishna B Shetty as a partner in his hotel business.

Further, the Trial Court noted that the Invitation Card (Exh.44) for the Satyanarayan Pooja, mentioned the name of Hotel Ambika, the name of the tenant and the name of the new partner, Krishna B Shetty. The Trial Court also noted that the tenant admitted his signatures in the assignment agreement dated 15.01.1985 (Exh.49), whereby he had assigned his hotel business in the leased premises to Krishna B Shetty for ₹ 2,00,000/- and accepted ₹ 50,000/- as earnest money. It was accordingly held that Krishna B Shetty was taken as a partner in the business initially but, thereafter, the business was sold to him for ₹ 2,00,000/-. The Trial Court observed that the original lease deed dated 22.01.1975 (Exh.55) stated clearly in page 4 that the tenant would not assign the business and would not allow third persons to conduct the said business in any way nor would he transfer the said business in any way in favour of a third person. The Trial Court then adverted to Section 15(1) of the Act of 1947, which provides that, in the absence of a contract to the contrary, the tenant would not be entitled to sublet or transfer or give on licence the leased premises and also the *proviso* thereto, which allowed the Government, by way of a notification in the Official Gazette, to permit in any area transfer of interest in premises held under leases or a class of leases to such extent as may be specified in the notification. As the conditions of the *proviso* were not satisfied on facts and in the light of the clear prohibition of assignment in the lease deed, the Trial Court decreed the suit.

14. The learned 13th Additional District Judge, Pune, affirmed these findings of the Trial Court and dismissed Civil Appeal No. 1030 of 1987 filed by the tenant. The Bombay High Court, however, reversed the findings of both the Courts below. While accepting that there was material to show that the tenant had assigned his business in favour of Krishna B Shetty, the High Court took recourse to the *proviso* to Section 15(1) of the Act of 1947 and held that it was permissible thereunder for a statutory tenant to transfer his tenancy rights even though the lease agreement prohibited such a transfer. Further, the High Court took note of the fact that Civil Suit No. 623 of 1986 filed by Krishna B Shetty against the tenant for specific performance had been dismissed. According to the High Court, so long as the legal possession remained with the tenant, mere creation of a partnership agreement by the tenant for the purpose of jointly carrying on business in the leased premises would not amount to sub-letting. Holding so, the High Court set aside the decree of eviction/possession and dismissed the suit. By its later judgment

A dated 09.09.2009, the High Court dismissed the Review Petition filed by the appellants herein, reiterating that the tenant had never parted with or left the premises and, being a partner, he was also involved in the business. Observing that the dominant purpose of the agreement executed by the tenant was not to sub-let the premises, the High Court opined that there was no error on the face of the record warranting exercise of review jurisdiction.

15. At this stage, we may note that neither of the parties thought it appropriate to place on record all the documents that they considered relevant. The original lease deed dated 22.01.1975 (Exh.55), relied upon by Mr. Vinay Navare, learned senior counsel, is not available for scrutiny. Similarly, the judgment in Civil Suit No. 623 of 1986, filed against the tenant by Krishna B Shetty, relied upon by the High Court and Mr. Sudhanshu S. Choudhari, learned counsel, was not produced prior to conclusion of the hearing of these appeals. However, the learned counsel deemed it fit to enclose a copy of the said judgment along with his Written Submissions, after this judgment was reserved. As the said document was not placed on record in keeping with due procedure and at the appropriate time, it is liable to be eschewed from consideration. More so, as the sole respondent entered appearance through counsel as long back as in January, 2011, and had ample opportunity to do the needful even if the said judgment did not form part of the record before the High Court. This Court is, therefore, constrained to adjudicate on the strength of the material available on record.

16. The issue for consideration is whether the tenant committed breach of the lease condition with regard to assignment of his business in the leased premises, warranting his eviction under Section 13(1)(e) of the Act of 1947. Though the tenant denied the same, Mr. Vinay Navare, learned senior counsel, would assert that the admissions made by him during his deposition as DW1 speak volumes to the contrary. He would point out that the tenant categorically admitted execution of the partnership agreement dated 01.01.1985 (Exh.48) and the assignment agreement dated 15.01.1985 (Exh.49), apart from conceding that the Invitation Card (Exh.44), issued in connection with the Satyanarayan Pooja performed in the hotel, mentioned his name along with those of Hotel Ambika and Krishna B Shetty.

17. Countering these contentions, Mr. Sudhanshu S. Choudhari, learned counsel, would argue that execution of a partnership deed by

the tenant, whereby a third party was inducted into the business as a partner, is of no consequence. He would point out that the partnership agreement dated 01.01.1985 (Exh.48) mentioned that the business would be undertaken as a partnership with the tenant; his brother, Laxman; and Krishna B Shetty, as partners and that the relevant clause in the said document, marked as Exh.51, indicated that Krishna B Shetty would look after the business transactions. He would place reliance on *Parvinder Singh Vs. Renu Gautam and others*¹ and *Mahendra Saree Emporium (II) Vs. G.V. Srinivasa Murthy*² in support of his contention that such a business arrangement would not amount to creation of an assignment or sub-tenancy.

18. In *Parvinder Singh (supra)*, this Court observed that if the tenant is actively associated with the partnership business and retains the use and control over the tenanted premises with him, maybe along with partners, the tenant may not be said to have parted with possession, but if the user and control of the tenanted premises has been parted with and the deed of partnership has been drawn up as an indirect method of collecting consideration for creation of a sub-tenancy or for providing a cloak to conceal a transaction not permitted by law, the Court is not estopped from tearing the veil of partnership and finding out the real nature of the transaction entered into between the tenant and the alleged sub-tenant.

19. This Court observed in *Mahendra Saree Emporium (supra)* that the transfer of a right to enjoy immovable property to the exclusion of all others during the term of the lease is the *sine qua non* of a lease under Section 105 of the Transfer of Property Act, 1882, and a sub-lease would imply parting with, by the tenant, of the right to enjoy such property in favour of his sub-tenant. This Court further noted that the phraseology employed for inferring sub-letting is quite wide and would embrace within its scope sub-letting of the whole or part of the premises as also assignment or transfer in any other manner of the lessee's interest in the tenanted premises. On facts, however, it was held that the tenant therein had not created a sub-tenancy merely by converting his sole proprietary business into a partnership business and as the tenant never dissociated himself from the business activity.

¹ (2004) 4 SCC 794

² (2005) 1 SCC 481

A 20. It would be apposite at this stage to peruse the relevant statutory provisions, viz., Section 13(1)(e) and Section 15(1) of the Act of 1947. They read as under: -

B *'Section 13 (1) Notwithstanding anything contained in this Act, but subject to the provisions of Section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-*

(a) - (d)

C *(e) that the tenant has, since the coming into operation of this Act unlaw-fully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein; or*

(ee).....'

D *'Section 15 (1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises*

E *Provided that the State Government may by notification in the Official Gazette permit in any area the transfer of interest in premises held under such leases or class of leases or the giving on licence any premises or class of premises and to such extent as may be specified in the notification.'*

G The aforestated provisions make it crystal clear that, in the ordinary course and notwithstanding anything contained in any other law, unless the contract itself permits sub-letting, it shall not be lawful, after coming into operation of the Act of 1947, for a tenant to sub-let the premises let out to him or to assign or transfer in any manner his interest therein. The *proviso* to Section 15(1), however, authorizes the State Government to permit, in any area, transfer of interest in premises held under leases or a class of leases, by issuing a notification in the Official Gazette, duly delineating the extent to which such transfer is permitted. Presently, it is

H

nobody's case that a notification was issued by the State Government having application to the case on hand. Viewed thus, reliance placed by the High Court upon this provision was wholly misconceived. In the absence of such a notification by the State Government, the issue is whether the tenant could have assigned his leasehold interest in favour of Krishna B Shetty under the assignment agreement dated 15.01.1985 (Exh.49), overriding the condition in the lease deed to the contrary.

21. It is in this context that the prohibitory condition in the lease deed dated 22.01.1975 (Exh.55) assumes importance. The Trial Court and the Appellate Court extracted the gist of the said lease condition in their judgments. The Lease Deed is stated to have recorded unequivocally in page 4 that the business of Hotel Ambika is the independent business of the tenant and that he would not assign the business and would not allow third persons to conduct the said business in any way nor would he transfer the said business in any way in favour of a third person. Therefore, there is a clear interdiction against transfer or assignment by the tenant of the business being run in the leasehold premises in favour of a third person.

22. Given the clear proscription in the lease deed, duly endorsed by the explicit language of Sections 13(1)(e) and 15(1) of the Act of 1947, the very execution of the assignment agreement dated 15.01.1985 (Exh.49), whereby the tenant admittedly assigned his business in the leasehold premises in favour of Krishna B Shetty for ₹ 2,00,000/- and accepted a sum of ₹ 50,000/- as earnest money, was sufficient in itself to establish transgression of the lease condition and the statutory mandate. No doubt, the earlier decisions of this Court, referred to hereinabove, laid down the principle that the mere execution of a genuine partnership deed by a tenant, whereby he/she converted a sole proprietary concern into a partnership business, while continuing to actively participate in the business and retaining control over the tenanted premises wherein the business is being run, would not amount to sub-letting. However, that principle has no role to play in the case on hand as the tenant did not stop short at executing the partnership agreement dated 01.01.1985 (Exh.48) but went on to execute the assignment agreement dated 15.01.1985 (Exh.49), whereby he assigned his hotel business in the leased premises to Krishna B Shetty and received earnest money also. The very act of execution of this document was sufficient in itself to complete the breach of the lease condition and the statutory mandate and did not require

- A anything further. Therefore, the subsequent failure of Krishna B Shetty in his specific performance suit in Civil Suit No. 623 of 1986, be it for whatever reason, is of absolutely no relevance or consequence. All the more so, as the landlord and landlady were admittedly not parties thereto and the judgment rendered in the said suit was not even placed on record as per due procedure and at the relevant time. Irrespective of the result
- B in the said suit, the ineluctable fact remains that the tenant admitted execution of the assignment agreement (Exh.49) and that singular fact settled the issue as to whether there was an act of assignment on his part. The High Court seems to have lost sight of this crucial aspect.

- C 23. We, therefore, find on facts that the tenant admitted committing a breach of the lease condition with regard to assignment of his leasehold interest in favour of a third party, when he signed the assignment agreement dated 15.01.1985 (Exh.49) for a consideration of ₹ 2,00,000/- and received ₹ 50,000/- as earnest money. The breach being complete on his part upon such execution itself, the failure of the assignee,
- D Krishna B Shetty, in his suit for specific performance against the tenant is of no import.

- E 24. The impugned judgments of the Bombay High Court are accordingly set aside and the judgment of the Trial Court, as affirmed by the Appellate Court, shall stand restored. In consequence, the respondents herein, being the legal representatives of the deceased tenant, shall vacate the suit premises and hand over vacant and peaceful possession thereof to the appellants within 2 months, failing which the appellants shall be at liberty to initiate execution proceedings before the competent court.

- F 25. The appeals and the I.As are allowed. There shall be no order as to costs.

Ankit Gyan

Appeals and I.As allowed.

(Assisted by : Shivani Pundir and Aarsh Choudhary, LCRAs)