Bai Hiragauri vs Abdul Kadar Mamadji And Anr. on 3 April, 1973

Equivalent citations: AIR1973SC1336, (1973)GLR617, (1973)0GLR60, (1973)1SCC799, 1973(5)UJ593(SC), AIR 1973 SUPREME COURT 1336, 1973 (1) SCC 799, 1973 (1) SCWR 634, 1973 SCD 456, 14 GUJLR 617, 1973 RENCR 555

Bench: A.N. Ray, D.G. Palekar

JUDGMENT

Palekar, J.

1. These are appeals by special leave from the judgment and Order dated October 18, 1966 of the High Court of Gujarat at Ahmedabad in Civil Revision Applications Nos. 446 of 1962 and 569 of 1962 respectively.

2. Bai Hiragauri-the appellant, is the aggrieved land lady and the respondents Abdul Kadar Mamadji and Abdul Rahim Musaji respectively are the tenants. The suits were for their eviction. Abdul Kadar was let out the premises bearing No. 1155 on a monthly rent of Rs. 23/- and Abdul Rahim was let out another shop bearing No. 1155/2-3 and the monthly rent was Rs. 40/-. The tenants had agreed to bear the dues in respect of municipal taxes and consumption of electricity. Abdul Kadar did not pay the rent from 1st November, 1956 to 31st August, 1957 and similarly Abdul Rahim was in arrears of rent from 1st February, 1957 to 31st August, 1957. Under the law, they were liable to be evicted for being in arrears for more than six months. As required by law the land lady gave them notice of eviction on 12-9-1957 calling upon them to pay the arrears of rent and to quit and deliver up vacant possession of the shops in their possession on or before the 30th SEPTEMBER, 1957. The tenants did not pay up nor did they send a reply to the notice. So the land lady filed two separate suits-one being Civil Suit No. 4613/1957 and the other being 2612/1957. The suits were contested. Both the suits were consolidated and disposed of together. The Trial Court by its judgment dated the 17th November, 1960 held that the tenants were in arrears for more than the statutory six months; that the standard rent was the same as claimed by the land-lady; that the tenants were liable to pay the municipal tax in addition and that in view Section 12(3)(a) of the Bombay Rent Act, as applied to the Gujarat area, both the tenants were liable to be evicted.

3. The tenants went in appeal to the City Civil Court. The appeals were heard together and the learned City Judge who heard the appeals confirmed the findings and the decrees of the Trial Court. The appeals were disposed of on January 31, 1952. From this judgment the two tenants filed Civil Revision Applications to the High Court. The learned Single Judge, who heard the Revision applications, relying upon a previous judgment of that court, held that since the rent was not "payable by the month" as required by Section 12(3)(a) referred to above the cases fell within Section 12(3)(b) of the Act and, therefore, decrees for eviction could not be passed. It is from that

order that the present appeals have been filed by the land lady by special leave.

4. A Preliminary objection seems to have been raised before the High Court on behalf of the land lady that a revision did not lie and under Section 29 of the Bombay Rent Act in its application to Gujarat, the Order passed by the City Civil Court was final and since no question under Section 115 CPC arose the revision was not maintainable. This objection was rejected by the learned Judge who pointed out that under Section 29(2) as it stood amended by Gujarat Act 18 of 1965 the High Court had jurisdiction. Before the amendment the sub-Section read, "No further appeal shall appeal lie against any decision in appeal under Sub-section (1)" But by the amendment the following was substituted therefore. High Court may, for the purpose of satisfying himself that any such decision in appeal was according to law, call for the case in which decision was taken and pass such order with respect thereto as it thinks fit." In the opinion of the learned Judge having regard to the amended Section 29(2) he could examine the decision as a whole and enquire as to whether the decision arrived at as a whole was according to law or not and the High Court was not confined merely to the authority to see whether there were any errors of law. Thus the learned Judge came to the conclusion that decisions were not in accordance with law because, in his opinion, though the monthly rent was admittedly as claimed by the land lady, since the tenants were also liable to pay the municipal tax in addition, it could not be said that these were cases were the "rent was payable by the month" within the meaning of Section 12(3)(a). It is not necessary to consider whether this view is correct because the present appeals must succeed on other points.

5. It is obvious from the judgment of the High Court that it interfered with the concurrent findings of the lower courts on the ground that it had jurisdiction to deal with the cases under Section 29(2). It seems to have escaped the learned Judge's notice that the revisions before him arose out of suits which had been filed in 1957. Therefore, though the revisions were heard after the 1965 amendment referred to above the revisions were not liable to be disposed of under the changed law. It has been held by this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas and Anr. that in a case like this in which the appellate decree had become final under the unamended Section 29(2) of the Bombay Rent Act, it could not be set aside in exercise of the jurisdiction under the amended Section 29(2) the amendment having been made long after the appellate decree had become final. The High Court could deal with the cases only under its revisional powers under Section 115 CPC. The learned Counsel for the tenants appearing before us conceded the position and requested that the cases may, therefore, be remanded to the High Court for being disposed of under Section 115 CPC.

6. We do not think any useful purpose will be served by sending the cases back to the High Court. As already pointed out the learned Judge interfered in these cases only because he thought that he had jurisdiction to do so under Section 29(2) as amended. It is obvious that he had recourse to that section because in view of the decided cases, he could not have interfered with the final decision of the City Court under Section 115 CPC. The Court in which the suits had been filed had jurisdiction to consider whether the suits fell within Section 12(3)(a) of Section 12(3)(b) Both the courts held on the facts that the cases fell under Section 12(3)(a). Even if that finding was erroneous in law and we do not want to suggest that it was the courts had jurisdiction, & it cannot be said that jurisdiction was exercised illegally or with material irregularity. The worst that could be said is that they had placed an erroneous construction on the relevant provisions.It has been held by this Court in Batilal v.

Ranchhodbhai which was also a case under the same Rent Act that an erroneous construction placed upon a statute does not amount to exercising jurisdiction illegally or with material irregularity and would not furnish a ground for interference under Section 115 CPC. See also Abbasbhai v. Gulamnabi .

7. In the result, therefore, the appeals are allowed. The order passed by the High Court is set aside and decrees passed by the City Civil Court are confirmed. The tenant respondents are given three months time to vacate the premises. The respondents shall pay the costs of the appellant before the High Court and this Court.