

M/S Fashion World vs Banshidhar Multi Builders Pvt. Ltd. on 17 October, 2022

Author: M.R. Shah

Bench: C.T. Ravikumar, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7325 OF 2022
(@ SLP (C) NO. 23808 OF 2018)

M/s. Fashion World

...Appellant(s)

Versus

Banshidhar Multi Builders Pvt. Ltd.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Madhya Pradesh at Indore in Misc. Petition No. 1509 of 2018 by which the High Court has dismissed the said miscellaneous petition preferred by the appellant and has confirmed the order passed by the learned Trial Court striking off the defence of the appellant – original defendant allowing the application submitted by the original plaintiff – landlord submitted under Section 13(6) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as the “Act, 1961”), the tenant – original defendant has preferred the present appeal.

2. At the outset, it is required to be noted that as per the Lease Date: 2022.10.17 17:54:50 IST Reason:

Agreement, the tenant is liable to pay the rent @ Rs.58,650/- per month for the area admeasuring 2500 sq.ft. super-built-up area. Under the Lease Agreement, over and above the above amount, the tenant is also liable to pay the maintenance charges as well as the service tax. On coming into force of the GST, the tenant is liable to pay the GST instead of service tax. The tenant, though paid the rent and the other maintenance charges, however, did not deposit/pay the GST. Therefore, the original plaintiff – landlord filed an application before the learned Trial Court under Section 13(6) of the Act, 1961 and prayed to strike off the defence of the appellant - defendant - tenant. The learned Tribunal allowed the said application and struck off the defence

of the appellant – defendant – tenant. The order passed by the Trial Court striking off the defence was the subject matter before the High Court. By the impugned judgment and order, the High Court has dismissed the miscellaneous petition filed by the appellant, which is the subject matter of present appeal.

3. We have heard Shri Ardhendumauli Kumar Prasad, learned counsel appearing on behalf of the appellant and Ms. Rukhmini Bobde, learned counsel appearing on behalf of the respondent.

4. At the outset, it is required to be noted that while issuing the notice, this Court passed the following order on 31.08.2018:-

“Application seeking exemption from filing O.T. is allowed.

Issue notice.

Learned counsel for the petitioner states that he is ready to deposit the balance amount of GST which comes to Rs. 5,80,000/- approximately. The petitioner will deposit the said sum before the Trial Court within a period of one week from today.

In the meantime, further proceedings of the suit shall remain stayed.”

5. It is reported that pursuant to the order passed by this Court dated 31.08.2018, the appellant has deposited the balance amount of GST. In that view of the matter and considering the fact that the defence was struck off on non-deposit/payment of the balance amount of GST, which is now deposited, we are inclined to set aside the order passed by the High Court as well as the learned Trial Court striking off the defence of the appellant.

6. However, Ms. Rukhmini Bobde, learned counsel appearing on behalf of the respondent has requested to keep the question of law namely, whether the rent includes the liability to pay the tax or not and whether on non-deposit/non-payment of the tax liability, the defence of the tenant can be struck off under Section 13(6) of the Act, 1961? 6.1 Ms. Rukhmini Bobde, learned counsel appearing on behalf of the respondent has further prayed to consider the enhancement of the rent in case this Hon’ble Court set aside the orders passed by the learned Trial Court as well as the High Court striking off the defence of the appellant. It is submitted that even as per the Lease Agreement and as admitted by the tenant in the written statement, there shall be periodical increase of the rent @ 15% every three years. It is submitted that therefore the tenant may be directed to pay the rent/enhanced rent by giving periodical rise by 15%. It is submitted that though at present the property in question may fetch the rent @ Rs. 4,00,000/- even by giving 15% periodical rise every three years, the rent would come as under:-

“i. Rent till the year September, 2011 : Rs. 58,650/- ii. Rent enhanced in October, 2011 : Rs. 76,245/- iii. Enhanced rent at the rate of 15% till September, 2017 will be Rs. 87,681/-

iv. Enhanced rent at the rate of 15% till September, 2020 will be Rs. 1,00,833/- v.
Enhanced rent at the rate of 15% till September, 2023 will be Rs. 1,15,958/-“

7. Learned counsel appearing on behalf of the respondent - landlord is justified in making the above request.

8. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court and that of the learned Trial Court striking off the defence of the appellant is quashed and set aside and the appellant is permitted to defend the eviction suit/suit, which may be considered in accordance with law and on its own merits. However, at the same time to strike the balance, we direct the appellant – tenant to pay the rent @ Rs. 58,650/- till September, 2011; @ Rs. 76,245/- for the period between October, 2011 to September, 2014; @ Rs. 87,681/- for the period between October 2014 to September, 2017; @ Rs. 1,00,833/- for the period between October, 2017 to September, 2020; @ Rs. 1,15,958/- for the period between October, 2020 to September, 2023 and to continue to pay the rent @ Rs. 1,15,958/- for the period October, 2023 onwards till the final disposal of the suit to be paid within six weeks from today. The learned High Court is hereby directed to finally decide and dispose of the suit expeditiously and within a period of six months from the date of receipt of the present order.

Present appeal is accordingly allowed / disposed of in terms of the above. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[M. R. SHAH]

NEW DELHI;
OCTOBER 17, 2022.

.....J.
[C. T. RAVIKUMAR]