

PETITIONER:
MOHAN AMBA PRASAD AGNIHOTRI & ORS.

Vs.

RESPONDENT:
BHASKAR BALWANT AHER (D) THROUGH LRS. C

DATE OF JUDGMENT: 01/03/2000

BENCH:
S.Rajendra Babu, S.S.M.Quadri

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

This appeal is directed against the judgment of the High Court of judicature at Bombay in Writ Petition No.4188 of 1989 passed on January 13, 1997. The appellants are the landlords of the House No. and C.T.S.No.1422, Kasba Peth (old House No.70 Raviwar Peth), Pune, (hereinafter referred to as the suit premises) which was leased out to the first respondent, (Bhaskar Balwant Aher) who died during the pendency of the proceedings. His legal representatives were brought on record as respondents 1A to 1G. Hereinafter, the parties will be referred to as the appellants and the respondents. The appellants let out the suit premises which comprised of three rooms -- two rooms on the front side for purposes of running a motorcycle workshop and one room on the rear side for residential purposes -- on monthly rent of Rs.45/-. On August 30, 1985, the appellants filed Civil Suit No.1423 of 1985 seeking eviction of respondent No.1 from the suit premises on four grounds : (i) bona fide personal requirement; (ii) change of user; (iii) imprudent use causing damage to and waste of the suit premises; and (iv) causing nuisance and annoyance. The suit was resisted denying all the four grounds. On November 30, 1987, the Principal Judge, Small Causes Court, Pune, found all the four grounds in favour of the appellants and decreed the suit for eviction of the first respondent. His appeal, before the VIIth Additional District Judge, Pune, against the said judgment and decree of the trial court, resulted in dismissal on August 1, 1989. The Appellate Court confirmed the decree of the trial court on three grounds; however, the ground of bona fide personal requirement of the appellants was found against them. The respondents then filed Writ Petition No.4188 of 1989 under Articles 226 and 227 of the Constitution challenging the correctness of the judgment and decree of the VIIth Additional District Judge, Pune. The High Court reversed the finding of the learned District Judge on all the three grounds and thus allowed the writ petition on January 13, 1997, which is now under challenge in this appeal. Mr.Uday Umesh Lalit, learned counsel appearing for the appellants, has submitted that in an application under Article 227 of the Constitution, the High Court ought not to have reappreciated the evidence and set aside the findings of facts found by the courts below concurrently and that on this ground alone the order under appeal is liable to be set aside. He argued the merits of

grounds on which the findings of the courts below were upset by the High Court. Mr. Makarand D. Adkar, learned counsel for the respondents, submitted that the findings recorded by the courts below were perverse and unsustainable, therefore, the High Court was justified in interfering with the findings of fact and allowing the writ petition. On the first submission of Mr. Lalit, it will suffice to observe that it is settled law that the jurisdiction of the High Court under Article 227 is not appellate but supervisory. It cannot interfere with a finding of fact recorded by lower court/tribunal unless there is no evidence to support the finding or the finding is perverse. One of the three grounds on which the courts below recorded the finding in favour of the appellants is change of user of the suit premises by the respondents. It has already been noticed above that the front rooms, which were let out for business purposes, were being used for residential purposes and the rear room which was let out for residential purposes, was being used partly for storing spare parts of the motor-cycle. This finding was reversed relying on the judgment of this Court in Gurdial Batra Vs. Raj Kumar Jain [1989 (3) SCC 441] wherein it was held that the premises let out for running a cycle and rickshaw repair shop was also being used for selling television sets. The Court held that it did not amount to change of user. The view taken by the High Court is supported by the decisions of this Court in Sant Ram Vs. Rajinder Lal and Ors. [1979 (2) SCC 274] and Kisan Dayanu Mano Vs. Vithal Vishnu Mohandalo [1990 (Supp) SCC 654]. The second ground on which concurrent finding was recorded by the courts below is nuisance and annoyance. The High Court disturbed that finding on the ground that one of the landlords (Sharad) who lived in the vicinity was examined as a witness but he did not say a word about nuisance and annoyance, so there is no evidence to support that ground. Our attention was invited to the photographs and the report of the Commissioner. Inasmuch as a copy of the statement of Sharad was not filed in this Court, we cannot examine the reason on which the High Court interfered so we decline to go into this aspect. We are left with the ground of imprudent use of the suit premises by respondent No.1. The courts below recorded concurrent finding that the first respondent was guilty of imprudent use, causing damage and waste to the property. This is one of the grounds to seek eviction of a tenant under Section 13(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short the Act), which reads as follows:-

13. (1)(a) that the tenant has committed any act contrary to the provision of clause (o) of Section 108 of the Transfer of Property Act, 1882;

It, in turn, provides that violation of clause (o) of Section 108 of the Transfer of Property Act, 1882 will be a ground for seeking eviction of the tenant. It has, therefore, become necessary to look to clause (o) of Section 108 of the Transfer of Property Act which runs thus :- 108. Rights and liabilities of lessor and lessee

(a) to (n) *** **

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries

not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto.

A plain reading of the provision shows that it contains various rights and liabilities of a lessee. Among them is that he shall use the premises as a person of ordinary prudence as if they were his own and that he shall not damage the demised building. The Trial Court as well as the Appellate Court found that the use of the premises by the first respondent was imprudent which caused damage to the suit premises. The High Court set aside that finding. Though the High Court noted that the respondents had stored the spare parts of the motor-cycles in the backyard, in the passage and also on the roof which amounted to imprudent use of the suit premises having noticed the photographs of the suit premises and perused the report of the Commissioner, which mentions that the tenants placed spare parts of the motor-cycles and old motor-cycles in the backyard and on the roof, it, however, commented that no evidence was produced to show that it had resulted in any injury or damage to the property and that the appellants had not examined any witness for this purpose. It may be pointed out that in para 7 of the plaint (Annexure A) the appellants stated, By keeping the material on the tin-roof of the outhouse the defendant has damaged the same and hence the tins are broken. Though repeatedly informed to remove the said old material from the tin the defendant has not removed the same. The defendant had denied keeping the waste material over the premises in his written statement. The first appellant was examined as P.W.1. He stated, inter alia, that the defendant had kept spare parts (unserviceable motor-cycle and motor-scooter tyres, tubes, etc.) on the roof at the rear portion and that on account of storing the articles on the roof, tin-sheets had been broken. He has also marked the photograph of the tin-sheets of the roof (Annexure D). The High Court failed to notice both the pleadings and the proof on the aspect of damage to the property and erroneously came to the conclusion that the finding was not supported by any evidence and set aside the same on a non-existent ground. This reason is sufficient to set aside the order of the High Court and restore the decree of eviction of the respondents passed by the Trial Court and confirmed by the Appellate Court. Accordingly, we set aside the impugned order of the High Court and restore the order of eviction passed by the lower courts on the said ground by allowing the appeal. In view of the fact that the respondents are having their business and residence in the suit premises and they are having a large number of family members, we consider it just and appropriate to grant time to vacate the suit premises till December 31, 2000, subject to their furnishing usual undertaking within two weeks from today in this Court and we order accordingly. The parties are directed to bear their respective costs.