

CASE NO.:
Appeal (civil) 1386 of 2005

PETITIONER:
Santosh Ajit Sachdeva & Ors

RESPONDENT:
Anoopi Shahani

DATE OF JUDGMENT: 21/08/2007

BENCH:
A.K.MATHUR & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1386 OF 2005

A.K. MATHUR, J.

1. This Appeal is directed against the order passed by the High Court of Judicature at Bombay in Writ Petition No. 7701 of 2004 on 29th November, 2004 whereby the learned Single Judge has upheld the order of the appellate court under the provisions of Section 13(1)(e) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947.

2. Brief facts which are necessary for the disposal of this appeal are as under:

The suit was filed by the plaintiff Smt. Anoop Shahani (respondent herein) against the defendant No. 1 Mrs. Santosh Ajit Sachdeva (appellant herein) wife of Mr. Ajit Sachdeva since died who was the original tenant of the suit premises for eviction on the ground of subletting of the premises. The suit premises, i.e., 61, Anjali, 6th floor, Behind Radio Club, Colaba Bombay 5 was let out by the plaintiff on the monthly rent of Rs. 1300/-. It was contended that the defendant No. 2 was a proprietary concern of the defendant No. 1 known as M/s Pearl Advertisings. During the pendency of the suit the plaint was amended and the defendants Nos 4 & 5 joined as defendants. The joining of defendants Nos. 4 & 5 were unlawful in respect of the suit premises. It is the case of defendant No. 1 who unlawfully sublet the suit premises to defendants Nos. 3, 4 & 5. The defendant Nos. 3, 4 & 5 claimed rights through defendant no. 1. According to plaintiff, defendant No. 1 has unlawfully sublet the suit premises to defendant No. 3 in the month of September, 1998 and therefore, the defendant No. 1 has lost protection of the Bombay Rent Act and therefore, the defendant No. 1 is liable to be evicted from the suit premises. The plaintiff by giving a notice dated 19.8.1989 through her advocate terminated the tenancy of the defendant no. 1 in respect of suit premises and called upon the defendant No. 1 to quit, vacate and deliver the quiet and peaceful possession of the suit premises. But no reply was given. Hence, the suit was filed against the defendants for eviction. On the basis of pleadings of the parties, the learned trial judge framed three issues in the suit on 7.11.1997 :

1. Does plaintiff prove that defendant nos. 1 & 2 illegally sublet the suit premises or unlawfully given on licence to the Defendant No. 3?

2. Is plaintiff entitled to decree of possession of the suit premises?

3. What order and decree?

3. Both the parties examined themselves with necessary witness and produced the documents. The trial court after considering the matter held that the plaintiff was not entitled to the decree for eviction. It is relevant to mention that Mr. Sachdeva expired and defendant No. 1 Smt. Santosh Ajit Sachdeva wife of Mr. Sachdeva became the tenant of plaintiff in respect of suit premises. As already mentioned above that M/s Pearl Advertisings is a proprietary concern of Shri Ajit Sachdeva. The defendant No. 3 M/s Impression Advertising Pvt. Ltd is the unlawful occupant in respect of suit premises. The case of the defendant was that her husband Ajit Sachdeva and she herself registered the Private Limited Company and were the Directors of the said company. During the life time of late Shri Sachdeva he also carried out the business in the name of M/s Impression Advertising and Marketing. Mr. Sachdeva died on 26th September, 1984 and thereafter defendant No. 1 was accepted as tenant by the plaintiff and the rent was being paid by the defendant No. 2 to the extent of Rs. 300/- and by M/s Impression Advertising and Marketing at Rs. 1000/- per month.

4. It was also contended that defendant No. 3 M/s Impression Advertising Co. did not commence the business owing to the illness of the Director late Shri Sachdeva. However in July, 1988 defendant No. 1 decided that the said company should conduct the business which was being carried out in the name of M/s Impression Advertising and Marketing. After the commencement of the business the defendant was remitting the rent to the plaintiff on behalf of the defendant no.1. Therefore, the defendant no. 1 denied that the defendant no. 3 was the unlawful occupant as alleged. It was also contended that the business of the defendant No. 3 was run by the defendant no. 1 as the Managing Director. Therefore, the allegation that defendant had unlawfully sub-let or given on leave and on licence basis to the defendant No. 3 was not proved. It was urged that defendant No. 1 carried on the business in the name of the defendant No. 2 and the premises continued to remain in her custody and control and defendant No. 3 did not claim any right or claim in the suit premises.

5. However, the trial court after examining the necessary evidence dismissed the suit. Hence, the respondent approached the appellate authority against the judgment and order passed by the trial court on 22.12.1998. The appellate authority examined the factual controversy and after reviewing all the oral & documentary evidence of the defendant No. 1 did not feel persuaded that she was controlling the whole business as Director of the company in the suit premises. The trial court after referring to the Annual Returns from 1988 to 1994 found that defendant No. 1 the appellant owns 1400 shares out of 2000 shares of the said company and one Shri Shivdutt Sharma owns 240 shares and Shri Gautam Sachdeva owns 250 shares of the said company. It was further held that Ms. Shibani Sachdeva and M/s Nikki Sachdeva own 60 & 50 shares respectively whereas S/Shri Charles D Souza & Bhooshan Prabhu were holding 90 shares & 50 shares respectively and on that basis the trial court found that the defendant (appellant herein) was found to be controlling the whole business. However, this finding was reversed by the appellate court. The appellate court found that simple shareholding of the appellant in the company is not enough & there is no factual foundation in respect of actual control over the business of the company in suit premises. Mere statement that the appellant holds 1400 shares or production of balance sheet is not sufficient to prove her actual control. The appellate court found that except this documentary evidence there is no evidence to show that the day to day activity is being controlled by the defendant No.1. On this evidence, the appellate court reversed the finding and held that merely she was having a majority share-holding by that it cannot be concluded that she was in actual control of the business of the

company in suit premises. Aggrieved against the order of the appellate court, the writ was filed before the High Court and the High Court after reviewing the evidence affirmed the finding recorded by the first appellate court that there is no sufficient material from which it can be concluded that actually the defendant - appellant is looking after the business of the company in the suit premises. Accordingly, the High Court dismissed the writ petition and affirmed the order of the appellate court. Aggrieved against this order, the present appeal was filed.

6. We have heard learned counsel for the parties & perused the record.

7. Mr. Dwivedi, learned senior counsel strenuously urged before us that the principal of lifting the corporate veil has been accepted and, therefore, if the corporate veil is lifted then it appears that the appellant who holds the major share is looking after the day to day functioning of the company and learned counsel accordingly placed reliance on the decision of this Court in the case of *Madras Bangalore Transport Co. (West) v. Inder Singh* reported in (1986) 3 SCC 62 and also placed reliance in a number of other judgments. The decision of *Madras Bangalore Transport Co. (West)* (Supra) came up for consideration before this Court in a subsequent judgment in the case of *Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal* reported in (2005) 8 SCC 252 wherein the case of *Madras Bangalore Transport Co. (West)* (Supra) was considered alongwith all other cases cited by learned counsel and it was specifically recorded with regard to *Madras Bangalore Transport Co. (West)* (Supra) .

" This case has been decided purely on facts peculiar to it and no principle of law has been laid down."

8. All other cases referred by learned counsel were also examined and we do not feel any need to refer any more of them. The theory of lifting the corporate veil has been accepted in certain circumstances which have already been referred by this Court in a series of decisions. However, so far as this case is concerned, as per the finding of fact recorded by the appellate court as well as by the High Court that the appellant-defendant has not been able to successfully prove that she is controlling the company, it was held by the appellate court that merely by holding a large number of shares is not sufficient but something more is required to prove that she is actually controlling and managing the business herself. That finding of the Appellate Court has been upheld by the High Court. Hence, in view of the concurrent finding of both the courts below, there is no reason for us to take a different view of the matter. Hence we do not find any merit in this appeal and accordingly the appeal stands dismissed. No order as to costs.