

CASE NO.:
Appeal (civil) 2546 of 2004

PETITIONER:
Municipal Council, Udaipur

RESPONDENT:
Mahendra Kumar

DATE OF JUDGMENT: 27/03/2008

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2546 OF 2004
With
CIVIL APPEAL NO. 2547 OF 2004

Dr. ARIJIT PASAYAT, J.

1. Challenge in these appeals is to the judgment rendered by a learned Single Judge of the Rajasthan High Court in two second appeals. The appeals were preferred by the appellant questioning correctness of the conclusions arrived at by the Courts below.

2. Factual position which is almost undisputed in both the cases needs to be noted in brief and is as follows:

3. For the sake of convenience the facts situation in Civil Appeal No.2546 of 2004 (Municipal Council, Udaipur v. Mahendra Kumar) is reflected.

4. The respondent as plaintiff filed a suit against the appellant seeking following reliefs:

"a) That a decree for permanent injunction be passed in favour of the plaintiff and against the defendant to the effect that the defendant should recover rent at the rate of Rs.175/- (rupees one hundred seventy five) per month from the plaintiff fixed before coming into being of the relationship of lessee and lessor between the plaintiff and the defendant and apart from this not to increase the rent unilaterally, not to recover the late fee, nor recover the rent by increasing the same, nor get the shops vacated forcibly from the plaintiff, nor dispossess him from the disputed shops nor create any sort of obstacle in his business, neither do such acts itself nor through its servants, agents or any officer nor allow them to do the same."

5. For the purpose of the claim respondent relied on an agreement dated 8.11.1980. The agreement had been executed describing that it was based on a license and was for a limited period of 11 months. According to the appellant the license

automatically stood terminated on expiry of the period. Thereafter no time was extended by the defendants. Plaintiffs claim that the defendants were accepting the rent regularly. By notice dated 6.6.1986 which was challenged in the suit an offer was made to occupy the property on payment of Rs.6,000/- per year. Stand of the respondent was that he was entitled to occupy the premises by payment of rent or license fee of Rs.175/- as agreed to in the agreement dated 8.11.1980 and which stood terminated by time. The Trial Court decreed the suit. However, the First Appellate Court allowed the appeal to enhance once by 10% and thereafter to seek the consent of the respondent if there was to be any enhancement.

6. High Court dismissed the second appeal. The order of the High Court is challenged in this appeal.

7. According to the learned counsel for the appellant-corporation the High Court enlarged the scope of dispute and went on to decide as to whether the agreement was a license or lease. It is submitted that property was that of the local authority and, therefore, Rajasthan Rent and Premises (Control of Rent Eviction) Act, 1950 (in short 'Rent Control Act') unilaterally does not apply to the facts of the present case. It was pointed out that the respondent can be evicted from the suit premises by giving notice under Section 106 of the Transfer of Property Act, 1882 (in short 'TP Act') where the lease did not subsist and the respondent had not occupied or continued the same property. The High Court and the First Appellate Court erroneously came to the conclusion that the appellant again increased the rent unilaterally. There was no question of any bilateral agreement for fixation of new rent as a person occupying property would never agree to enhance and would continue to remain in the property for any length of time at a rate fixed years back. The conclusion that it can be enhanced once is without any legal foundation. It was pointed out that even if it is assumed that the agreement subsists, clauses 3 and 8 permitted the appellant to unilaterally alter the conditions by way of orders which have to be complied with by the respondent and for a period of 11 months renew for further fresh term.

8. Learned counsel for the respondent on the other hand submitted that the respondent is willing to pay at such rate as may be fixed in accordance with law.

9. At the outset has to be noticed that the validity of the notice was not challenged in the suit. Notice dated 6.6.1986 contained a reference to the order No.F5(293)LB/77/2183-2730 dated 10.8.83 of the Local Self Government which permitted fixing of rent in a particular manner. According to the learned counsel, the notice for fixing of rent was based on the aforesaid order of the Local Self Government of the State.

10. It was not the stand of the respondent that the order of the Local Self Government was not binding and/or that the same was without any authority. Clauses 3 and 8 of the agreement are also relevant. They read as follows:

"3. That the said agreement shall be deemed to have been executed for eleven months and for further renewal the licensee shall have to move an application one month before, which shall be considered by the Council and if found property further renewal shall be made. The shop shall be handed over in the same condition in which it has been taken and shall

not make any alterations therein nor shall cause any damage."

8. That apart from the said conditions in connection with this shop the Council shall also issue other orders from time to time, which shall also be complied with by the licensee."

11. The suit was for permanent injunction, in terms of Section 38 of the Specific Relief Act, 1963 (for short 'Specific Relief Act'). Section 38 reads as under:

"38. Perpetual injunction when granted \026 (1) subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) xxx xxx xxx"

12. An interesting question arises as to whether in the absence of the subsisting agreement a decree for specific performance can be granted. There is no dispute that the plaintiff can seek for performance only an agreement which is subsisting. As was noted by this Court in Percept D'mark (India) (P) Ltd. v. Zaheer Khan and Anr. (2006 (4) SCC 227), the plaintiff cannot maintain a suit for specific performance after the contract is determined. In the aforesaid case it was noted as follows:

"60. We have perused the contract in detail. The terms of the contract were expressly limited to 3 years from 30.10.2000 to 29.10.2003, unless extended by mutual agreement, and all obligations and services under the contract were to be performed.

61. Clause 31(b) was also to operate only during the term i.e. from the conclusion of the first negotiation period under clause 31(a) on 29.7.2003 till 29.10.2003. This Respondent 1 has scrupulously complied with. So long as clause 31(b) is read as being operative during the term of the agreement i.e. during the period from 29.7.2003 till 29.10.2003, it may be valid and enforceable. However, the moment it is sought to be enforced beyond the term and expiry of the agreement, it becomes prima facie void, as rightly held by the Division Bench."

13. It is to be noted that the property being of the local authority the Rent Control Act did not have any application.

14. The High Court considered the agreement to be a lease overlooking the fact that under the Rajasthan Municipality Act, 1959 (in short 'Municipal Act') no lease can be made without following the procedure prescribed under the Rules

made hereunder.

15. The controversy can be looked at from another angle. For a period of 11 months there was no attempt to modify the rent fixed under the contract. On the expiry of the period a fresh agreement has to be entered into. That has to be on agreed terms. In that view of the matter the question of enhancement of rent unilaterally does not arise.

16. It is to be noted that even the original agreement in clause 8 permitted the Council to issue such orders from time to time in relation to the conditions. If the view expressed by the First Appellate Court and the High Court is accepted then the power to issue orders from time to time in relation to the conditions becomes redundant. Once there is no dispute about the power of enhancement, the question of enhancing the rent once by 10% and thereafter to enhance it on consent of both the parties is clearly without any foundation.

17. In the circumstances it is to be held that the agreement was for a period of 11 months. For continuance a fresh agreement was required to be entered into. If no agreement existed between the parties, the question of unilateral possession does not arise. Since the power of enhancement has been considered on the basis of clause 8, the question of restraining it to a one-time exercise is clearly without any foundation as the clause itself permits issue of orders "from time to time". Additionally, in the background of the scope of Section 38 of the Specific Relief Act, the First Appellate Court and the High Court were not justified in granting relief to the respondent. In the normal course we would have left fixation of rent to the authorities. Considering the long passage of time while deciding the question of law, we feel interest of justice would be best served if the rent is enhanced to Rs.1,000/- from 1.1.2007 and Rs.700/- for the previous three years. The agreement on the aforesaid terms shall be duly entered into by the parties.

18. The appeals are accordingly disposed of without any order as to costs.