

Om Parkash v. Darshan Lal and others (G. R. Majithia, J.)

Colleges at Amritsar and Patiala, to consider the claim of the petitioner for admission to M.D./M.S. Post-Graduate Medical Course in the speciality/discipline applied for by him, and in case on such consideration he is found meritorious enough to claim the seat in the quota of 'outstanding sportsmen', to grant the same to him according to the priority of choice indicated by him in his application, forthwith. The petitioner shall also be entitled to the costs of this petition, which are quantified at Rs. 1,000.

P.C.G.

Before : G. R. Majithia, J.

OM PARKASH,—Petitioner.

versus

DARSHAN LAL AND OTHERS,—Respondents.

Civil Revision No. 1305 of 1983.

20th June, 1989

*Code of Civil Procedure (V of 1908)—S. 47, O. 21, Rl. 35—Haryana Urban (Control of Rent and Eviction) Act, 1973—Execution Proceedings—Judgment Debtors filing objections against execution—Objectors claiming protection of 1973 Act as tenants—Civil Court—Whether has jurisdiction to pass decree of eviction.*

*Held*, that in order to be covered under the definition of non-residential building in section 2 (d) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, the lease has to satisfy two conditions, namely, (a) the lease has to be in respect of a building and (b) the subject-matter of lease must be covered under the definition of "building" as defined in the Act. The Court must determine the character of the lease by asking itself as to what was the dominant intention of the parties. A close scrutiny of the lease deed reveals the dominant purpose of the lease was leasing of the factory comprising of building and machinery. In fact, the letting out was of the running business. The building which housed the factory becomes secondary since the business or the industry has to be accommodated in some enclosure or building. The dominant purpose was thus leasing out of the running business and if that is so, the definition of "building" as contained in section 2(a) of the Act will be inapplicable and the lease will not come under the purview of the Act.

(Para 4).

*Held*, that the decree-holder in the present case leased out the factory—a running business to the judgment-debtors. The terms

and conditions of the lease are incorporated in the lease deed which is a registered document. One of the conditions in the lease deed was that in the event of any dispute between the parties, the matter has to be referred to arbitration. The arbitrator was nominated by the Court with the consent of the parties. He gave his award which was made the rule of the Court. The judgment-debtors took advantage and remained in possession of the demised premises for a period beyond the one mutually agreed upon. Since the judgment-debtors failed to comply with the terms of the consent decree, execution had to be taken out and thereafter objections to the execution were filed. Thus, the proceedings indicate that with impunity the judgment-debtors have been able to thwart the attempt of the decree-holder to execute the order which was passed on the solemn assurance given by the parties. May or may not be the parties were aware of the tenancy legislation. They may not be able to foresee what will be the future amendments in the legislation. In a welfare State, the State has to guarantee equality before law to all its citizens and it must ensure that equality exists not on paper but in practice. Suitable amendment must be made in the legislation excluding the tenancy with regard to running business and/or solemn agreements arrived at between the parties, even where by mutual consent they override some provision of the statute.

(Para 5).

*Petition under Section 115 for revision of the order of the court of Shri P. L. Ahuja, PCS, Sub Judge Ist Class Jagadhri dated 23rd February, 1983 dismissing the execution application and accepting the objections of Darshan Lal J.D. and leaving the parties to bear their own costs.*

*Claim : Execution application.*

*Claim in Revision : For reversal of the order of the lower court.*

C. B. Goel with Madan Jassal, Advocate, for the Petitioner.

V. K. Jain, Advocate. for the Respondent.

#### JUDGMENT

G. R. Majithia, J.

(1) This revision petition is directed against the order of the Executing Court, which accepted the objections filed by the judgment debtor under Section 47 of the Code of Civil Procedure and resultantly dismissed the execution petition filed by the decree holder.

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(2) The facts : On September 1, 1968, a lease deed (Exhibit D.H. 3), was executed between the petitioner-lessor hereinafter referred to as the decree-holder) and Darshan Lal Lajpat Rai-lessees (hereinafter referred to as the judgment-debtors) regarding leasing of a factory comprised of building and machinery and other equipment detailed in the schedule which was appended to the lease deed for a period of five years with effect from September 1, 1968, to August 31, 1973 at a monthly rent of Rs. 800. The lease deed further stipulated that the lessee cannot make any modification or alteration in the machinery installed. If any machinery is installed by the lessee during the continuance of the lease, he was to remove the same on the expiry of the lease period. The lessee was refrained from using the business name of the lessor M/s Manohar Metal Works. The covenant further stipulated that in case of any dispute arising with respect to the interpretation or any other matter relating to the lease deed, it was to be settled by arbitration in accordance with the provisions of the Indian Arbitration Act. It appears that on the expiry of the lease period, the judgment debtors did not surrender possession. The matter was referred to the arbitration of Shri Des Raj through the intervention of the Court and he was directed to decide the following dispute as is evidenced by the Court order dated June 12, 1975 (Exhibit D.H. 2/5) :—

“He is directed to decide whether the lease period of the metal manufacturing factory has expired or not, if expired then whether the respondents are liable to surrender possession or not of the said factory. If so on what terms and conditions”.

The arbitrator was directed to submit his report on or before August 4, 1975. The arbitrator submitted his award Exhibit D.H.2/2 dated September 3, 1975 in Court. The award was made the rule of the Court by an order dated September 3, 1975 (Exhibit D.H. 4) and the following decree was passed :—

“This suit came up today before this court for final decision in the presence of Sh. Om Parkash plaintiff with Sh. Jagdish Parshad Advocate for the applicant (plaintiff) and Sh. Lajpat Rai defendant No. 2 with Sh. B. D. Garg Advocate for defendants.

It is ordered that as per statements of the parties the award Ex. P.X. is made rule of the court and accordingly a

decree is passed in favour of the applicant against the respondents to the effect that the respondents will restore possession of the machinery except one kharad and the shafts to the applicant on or before 31st December, 1975 and that of the factory premises including shafts and one kharad on or before 31st December, 1980.

However the parties are left to bear their own costs.”

The possession was not delivered as per the terms of the Court order. Execution was taken out on January 19, 1981. It is stated that the decree-holder was put in possession of some part of the building. The obstruction to the execution was made by Balmukand and others. At this stage, the judgment debtors filed objections under section 47 read with Order 21, rule 35 of the Code of Civil Procedure against the execution of the decree. The principal ground was that the objectors were tenants and the tenancy rights are protected under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short “the Act”). The Civil Court had no jurisdiction to pass any decree of eviction against them.

(3) The learned Executing Court framed the following issues arising from the pleadings of the parties :—

1. Whether Mr. Darshan Lal J. D. was a tenant in the premises ? OPJD (Onus objected to)
2. Whether the judgment and decree dated 3rd September, 1975 is illegal, null and void *ab initio* and as such un-executable ? OPJD.
3. Whether the decree holder is entitled for possession of police help ? OPDH.
4. Whether the application is not maintainable ? OPJD
5. Relief.

Under issues 1 and 2, which were disposed of together, it was held that the demised premises are covered under the definition of the term “building” as given in the Act and the ejection order dated September 3, 1975, passed by the Subordinate Judge is illegal. He allowed the objections and dismissed the execution application. The decree-holder has challenged the order of the Executing Court in revision.

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(4) It will be useful to reproduce the definition of the term "building" and "non-residential building" as given in the Act:—

2. (a) "building" means any building or a part of building let for any purpose whether being actually used for that purpose or not, including any land, godowns, outhouses, gardens, lawns, wells or tanks appurtenant to such building or the furniture let therewith or any fittings affixed to or machinery installed in such building, but does not include a room in a hotel, hostel or boarding house.

2. (d) "non-residential building" means a building being used solely for the purpose of business or trade;"

In order to be covered under the definition of non-residential building in section 2 (d) of the Act, the lease has to satisfy two conditions, namely, (a) the lease has to be in respect of a building and (b) the subject-matter of lease must be covered under the definition of "building" as defined in the Act. The Court must determine the character of the lease by asking itself as to what was the dominant intention of the parties. A close scrutiny of the lease deed reveals the dominant purpose of the lease was leasing of the factory comprising of building and machinery. In fact the letting out was of the running business. The building which housed the factory becomes secondary since the business or the industry has to be accommodated in some enclosure or building. The dominant purpose was thus leasing out of the running business and if that is so, the definition of "building" as contained in section 2(a) of the Act will be inapplicable and the lease will not come under the purview of the Act. A somewhat identical question came up for consideration before a Full Bench of this Court in R.S.A. No. 510 of 1982, decided on May 29, 1989. The facts in that case were : The owner of a building situate in Civil Lines, Ludhiana, installed a flour mill in a part of the building. Besides the milling machine, the flour mill included one electric motor of 20 H.P., starter, shafts *et cetera*. The owner leased out the flour mill as well as the building in which it was running to Dalip Singh and others under an oral agreement which was followed by a written rent-note, at a monthly rent of Rs. 375. The lease was initially for a period of three months. On the expiry of the lease period, it was not renewed. The landlord did not accept rent after the expiry of the lease period and filed a suit for possession in the Civil Court at Ludhiana alleging that the dominant purpose of the lease was the flour mill and the tenancy

was not covered under the provisions of the East Punjab Urban Rent Restriction Act. The regular second appeal was referred to a Full Bench of this Court and the Full Bench answered the question thus:—

“We are, therefore, of the considered view that the lease in question is not covered under the definition of non-residential building as defined in the Act. We are further of the view that the test to be applied for determining the true character of the lease in such a case is of dominant intention and applying the said test the lease under consideration was of the flour mill, the building being let out incidently. We, therefore, hold that such a lease is not covered under the provisions of the Act and the Civil Court had jurisdiction.”

M. M. Punchhi, J. while agreeing with the view expressed by A. P. Chowdhri, J. further observed as follows:—

“The determining factor rather is the dominant intention of the parties, without discovering which the dominant purpose cannot be discerned. It needs to be emphasized here that laws are meant for people; not people for laws. The dry and abstract definition of the expression “non-residential building” is not meant to be of such wide amplitude so as to kill the live intention of the parties discernible from the terms of their lease and conduct.”

(5) The ratio of this judgment fully covers the facts of the instant case. Even otherwise, as observed by M. M. Punchhi, J. in the Full Bench judgment referred supra, the laws are meant for people and not people for laws. The decree-holder in the present case leased out the factory a running business to the judgment-debtors. The terms and conditions of the lease are incorporated in the lease deed which is a registered document. One of the conditions in the lease deed was that in the event of any dispute between the parties, the matter has to be referred to arbitration. The arbitrator was nominated by the Court with the consent of the parties. He gave his award which was made the rule of the Court. The judgment-debtors took advantage and remained in possession of the demised premises for a period beyond the one mutually agreed upon. Since the judgment-debtors failed to comply with the terms of the consent decree, execution had to be taken out and thereafter

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objections to the execution were filed. Thus, the proceedings indicate that with impunity the judgment-debtors have been able to thwart the attempt of the decree-holder to execute the order which was passed on the solemn assurance given by the parties. May or may not be the parties were aware of the tenancy legislation. They may not be able to foresee what will be the future amendments in the legislation. In a welfare State, the State has to guarantee equality before law to all its citizens and it must ensure that equality exists not on paper but in practice. Suitable amendment must be made in the legislation excluding the tenancy with regard to running business and/or solemn agreements arrived at between the parties, even where by mutual consent they override some provision of the statute.

(6) For the reasons recorded above, this revision petition is allowed. The order under challenge is set aside.

(7) During the course of arguments, it was brought to my notice that the judgment debtors remained in possession after the expiry of the period mentioned in the order of the Court and they did not pay any rent or mesne profits. If that is so, the learned Executing Court will assess the mesne profits and direct the judgment debtors to pay the same to the decree-holder within a reasonable time. I am sure, the Executing Court will execute the decree expeditiously and without further delay.

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R. N. R.

*Before : Sukhdev Singh Kang, J. S. Sekhon, JJ.*

STATE OF HARYANA,—Appellant.

*versus*

M/S. FRICK INDIA LTD., FARIDABAD,—Respondent.

*General Sales Tax Reference No. 27 of 1983.*

3rd August, 1989.

*Haryana General Sales Tax Act, 1973—Ss. 40 and 42—Jurisdiction to remand—Scope of—Appellate authority not competent to direct re-examination of merits on matters raised in appeal by the assessee on the ground that they were not properly examined by the assessing authority.*