

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3509 OF 2002

JAGADISH RAMKRISHNA CHAWKWALE (D) Appellant

VERSUS

SHIVAJI LAXMAN BAGAL (D) THR. LRS. Respondent

O R D E R

This appeal has been filed against the impugned judgment and order dated 5.10.2000 passed by the High Court of Judicature at Bombay in Writ Petition No. 1080 of 1989 by which it has dismissed the Writ Petition of the appellant upholding the judgment of the First Appellate Court by which the judgment and decree of eviction passed by the trial Court in favour of the appellant had been set aside/reversed.

The appellant, landlord filed suit for eviction against the respondents on the ground of inducting a sub-tenant unauthorisedly in view of the statutory provisions of Section 13(1)(e) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947(hereinafter being called as "the Act, 1947"), and also for not using the suit property without any reasonable cause for more than six months prior to the filing of the suit as provided under Section 13(1)(k) of the Act, 1947.

The suit was contested by the respondents and on the basis of the pleadings taken by the parties, the issues were framed and trial Court decreed the suit in R.C.S. No. 245 of 1986 vide judgment and decree dated 30.12.1986.

Aggrieved, the respondents preferred the Regular Civil Appeal No. 137 of 1987 and the Appellate Court allowed the appeal reversing the judgment and decree of the trial Court vide judgment and decree dated 29.9.1988. Aggrieved, the appellant preferred the writ petition no. 1080 of 1989 which has been dismissed by the High Court.

Hence this appeal.

The trial Court while dealing with the suit on the basis of the pleadings framed large number of issues and most relevant thereof has been issue nos. 2 and 3 which read as under:-

(2) Does he further prove that the Defendant is not using the suit property for the purpose for which it was let for a period

of 6 months or more next proceeding the institution of the suit?

(3) Does he further prove that the Defendant has unauthorisedly assigned his interest in the suit property in favour of Balkrishna Shinde?

After appreciating the evidence on record, both the issues had been decided in the affirmative, i.e., in favour of the appellant. The First Appellate Court reversed the finding on the issue under Section 13(1)(k) observing as under:-

".....Prima facie, the allegations incorporated hereinabove would go to show that the plaintiff has proved the non-user. But on careful consideration of the material placed on the record, it may be observed that the landlord has not adduced any evidence, worth the name, with reference to the non-user without reasonable cause..."

The High Court while dealing with the writ petition affirmed the said finding without appreciating that once the appellant proved his case for non-user of the premises for more six months prior to filing the suit, the burden was on the respondents to prove that there was a "reasonable cause" for stopping the business or for non using the premises.

We had gone through the written statement filed by the respondents/defendants before the Civil Court. No pleading showing any "reasonable cause" had been taken. Learned counsel for the respondents failed even to point out any reference to the phrase "reasonable cause" for not using the premises. Thus, the High Court committed an error ignoring such a material issue. This is the sole ground on which the appeal must succeed.

In view of the above, the appeal succeeds and is allowed. The judgment and decree of the First Appellate Court is set aside restoring the judgment and decree of the trial Court.

Learned counsel for the respondents prays for some time to vacate the premises, being a commercial premises. Time upto 31st July, 2013 is granted to the respondents to vacate the premises subject to filing of a usual undertaking within four weeks from today. The respondents are further directed to pay a rent of Rs. 2000/- p.m. to the appellant till 31st July, 2013, if they want to continue.

So far as arrears, if any, are concerned, it will be applicable at the old rate.

.....J.
(DR. B.S. CHAUHAN)

.....J.
(V. GOPALA GOWDA)

ITEM NO.104

Court No.7

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 3509 OF 2002

JAGADISH RAMKRISHNA CHAWKALE (D)

Appellant (s)

VERSUS

SHIVAJI LAXMAN BAGAL (D) THR. LRS.

Respondent(s)

(With appln(s) for permission to file counter affidavit and transposition and exemption from filing O.T.)

Date: 04/02/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. Koka Raghava Rao, Sr. Adv.
Mr. Niklish Kumar, Adv.
Mr. K.N. Rai, Adv.

Mr. Gopal Balwant Sathe, Adv.

For Respondent(s) Mr. Uday B. Dube, Adv.
Mr. Kuldip Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Application for transposition is allowed.

Correct memo of parties may be prepared during the course of the day.

The appeal is allowed in terms of the signed order.

	(DEEPAK MANSUKHANI)		(M.S. NEGI)	
	Court Master		Court Master	

(Signed order is placed on the file)