

[BHAICHAND RATANSHI

A

v.

LAXMISHANKER TRIBHOYAN

July 29, 1981

B

[O. CHINNAPPA REDDY, A.P. SEN AND BAHARUL ISLAM, JJ.]

*Bombay Rents, Hotel and Lodging House Rates Control Act 1947—Section 13(1)(g) and 13(2)—Scope of—Comparative hardship—Tests for deciding—Revisional jurisdiction of the High Court under the Act limited.*

C

In his suit under section 13(1)(g) of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 seeking the eviction of the respondent-defendant from the suit premises, the plaintiff-appellant claimed that after having been displaced from Uganda on account of political upheaval in that country he intended to settle down in his native town and that therefore, he reasonably and *bona fide* required the suit premises under the defendant's occupation for setting up his business.

D

In replication the defendant claimed that he, a man of slender means, had built up his goodwill by running a business from the premises over the years and his eviction from the premises would put greater hardship on him than on the plaintiff. In support of his case he pleaded that section 13(2) of the Act makes it incumbent on the Court to refrain from passing an order of eviction under section 13(1)(g) if it is satisfied that it causes greater hardship to the tenant than to the landlord.

E

The court of first instance, and in appeal the District Judge, negatived the defendant's claim of comparative hardship to him because the defendant himself was not in actual possession of the premises but had in fact inducted another person who had his own business elsewhere in the town but used the suit premises as a mere godown.

F

On appeal the High Court declined to pass an order of eviction under section 13(1)(g). It held that the defendant, who in his old age was receiving some maintenance from the licensee for the use of the premises, would be deprived of his only source of livelihood were he evicted from the premises and that secondly the fact that the plaintiff had gone back to Uganda showed that he was not sure whether to settle down in India or go back to Uganda.

G

Allowing the appeal.

**HELD :** Section 13(2) seeks to strike a just balance between the landlord and tenant. In considering the question of greater hardship the Court would have to take into account the circumstances which would tilt the balance of hardship either way. The existence of alternative accommodation on both sides is an important though not a decisive factor. On the terms of section 13(2)

H

**A** the question whether or not there would be greater hardship to the tenant by passing the decree cannot turn on mere burden of proof but the parties must lead evidence. [157 A-D]

The High Court erred in non-suiting the plaintiff. There is enough evidence to show that he came from Uganda as a result of political upheaval in that country, that he had considerable business experience in that country and that he had the requisite wherewithal to carry on business. In contrast the defendant was not in actual possession of the suit premises but had given possession of the premises to another person who had a separate shop of his own, who only used the premises as his godown. The mere circumstance that the defendant was aged and infirm and that the licensee paid him some amount regularly would not imply that a decree under section 13(1)(g) would cause greater hardship to the defendant.

**B** Section 13(2) would have been relevant had the defendant himself been in possession of the premises. In any event the defendant having died the question of greater hardship to him under section 13(2) would not arise. [158 A-F]

**C** Although the jurisdiction exercisable by the High Court under the Act is wider than its jurisdiction under section 115 C.P.C. its revisional jurisdiction under the Act could only be exercised for the limited purpose of satisfying itself that the decision of the Courts below was according to law. So long as the finding of the Courts below was not perverse or erroneous the High Court cannot, on a reappraisal of the evidence, substitute its own finding for the one reached by the Courts below. [157 E-F]

**D** In dealing with the question of comparative hardship the Court is only concerned with the hardship of the landlord and the tenant but not of a complete stranger. [156 F-G]

**E** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1006 of 1971

**F** Appeal by special leave from the judgment and order dated the 23rd September, 1970 of the Gujarat High Court in C.R.A. Nos. 1295 of 1966, 49 and 50 of 1967.

*S.K. Dholakia and R.C. Bhatia* for the Appellant.

*M.V. Goswami* for the Respondent.

The Judgment of the Court was delivered by

**G** SEN, J. This appeal, by special leave from a judgment of the Gujarat High Court, involves the question of comparative hardship under s. 13(2) of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947—for brevity ‘the Act’.

**H** First as to the facts. The appellant-plaintiff is a merchant who settled in Africa and was carrying on business in Kampala in

A

Uganda. Due to political upheaval in that country, he along with his family migrated to India in 1964 and began living in a rented house at Rajkot, where he owns a building known as 'Trivedi House'. On September 21, 1964 he brought a suit for eviction of the respondent-defendant, Laxmishanker Tribhoyan, from the suit premises, which consists of a shop on the ground floor of the said building, on the ground that he reasonably and *bona fide* required the suit premises for starting his business. The defendant denied the claim and pleaded that the plaintiff did not want to settle down at Rajkot and had already gone back to Africa and that, in any event, even if the plaintiff's alleged need under s. 13(1) (g) of the Act were proved, no decree for eviction could be passed because of comparative hardship by reason of s. 13(2) of the Act. It was alleged that the defendant was a man of slender means and had built up a good-will by running his business from the suit premises over the years and he would be put to greater hardship as it would disrupt his business if he were evicted therefrom.

The court of first instance as well as the District Judge in appeal upheld the plaintiff's claim under s. 13(1) (g) of the Act and decreed the suit. In revision, the High Court held that the finding of the courts below as to the plaintiff's need to be reasonable and *bona fide* being a finding of fact could not be interfered with under s. 29(2) of the Act, but non-suited the plaintiff on the ground of comparative hardship under s. 13(2) of the Act. As regards comparative hardship, both the courts below held that the defendant was not in actual possession of the suit premises, but had inducted one Labhshanker as his licensee, who was in occupation thereof, and, therefore, question of hardship under s. 13(2) of the Act did not arise. They further held that the licensee, Labhshanker, owned a separate shop of his own from where he was carrying on his business and had taken the suit premises from the defendant for using it as a godown and, therefore, there was no question of any hardship to him as he would be put to the inconvenience of shifting his goods to his own shop. The High Court, however, differed from the courts below and held that the defendant would be put to greater hardship. In coming to that conclusion, the High Court observes: "Although the defendant Laxmishankar Tribhoyan was not in actual occupation of the shop, the aforesaid Labhshanker was running the business on his behalf and paying the defendant a fixed amount of maintenance because he was aged and infirm and also because he was his uncle and, therefore, if we were to confirm the decree for eviction of the courts below, the defendant would be deprived

B

C

D

E

F

G

H

**A** of his only source of livelihood for he was dependent on Labh-shanker who was running his business from the suit premises." As regards the plaintiff, the High Court was pleased to observe: "Now so far as the plaintiff is concerned, he has his one leg in Rajkot and another in Africa. Therefore, there is still uncertainty of his settling down in Rajkot." In that view of the matter it held that no decree for eviction under s. 13(1) (g) of the Act can be passed and accordingly reversed the decree of the courts below:

Section 13(2) of the Act reads as follows :

**C** 13(2)—No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, great hardship would be caused by passing the decree than by refusing to pass it.

**D** Where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.

**E** It is plain upon the language of s. 13(2) of the Act that it creates a further fetter on the power of the courts to pass a decree for eviction once it held in favour of the plaintiff on the issue of reasonable and *bona fide* requirement under s. 13(1) (g) of the Act. The words "No decree for eviction shall be passed" make it incumbent on the court not to pass a decree on the ground specified under s. 13(1) (g) of the Act unless it is satisfied as to the comparative hardship caused to the landlord and the tenant by passing a decree than by refusing it. In dealing with the question, the court is only concerned with the hardship of the landlord and the tenant and not to a complete stranger. Under s. 13(2) of the Act, if there is greater hardship to the tenant, the court should refrain from making an order for eviction under s. 13(1) (g) of the Act. On the other hand, if the making of an order of eviction under s. 13(1) (g) of the Act would cause no such hardship, the court has no jurisdiction but to pass such an order.

**H** The Legislature by enacting s. 13(2) of the Act seeks to strike a just balance between the landlord and the tenant so that the order of eviction under s. 13(1) (g) of the Act does not cause any hardship

to either side. The considerations that weigh in striking a just balance between the landlord and the tenant were indicated in a series of decisions of the Court of Appeal, interpreting an analogous provision of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (c. 32), s. 3(1), Sched. I, para (h) : *Sims v. Wilson*<sup>(1)</sup>, *Fowle v. Bell*<sup>(2)</sup>, *Smith v. Penny*<sup>(3)</sup>, *Chandler v. Strevett*<sup>(4)</sup> and *Kelly v. Goodwin*<sup>(5)</sup>. One of the most important factors in considering the question of greater hardship is whether other reasonable accommodation is available to the landlord or the tenant. The court would have to put in the scale other circumstances which would tilt the balance of hardship on either side, including financial means available to them for securing alternative accommodation either by purchase or by hiring one, the nature and extent of the business or other requirement of residential accommodation, as the case may be. It must, however, be observed that the existence of alternative accommodation on both sides is an important but not a decisive factor.<sup>(6)</sup> On the issue of greater hardship the English courts have uniformly laid down that the burden of proof is on the tenant. We are inclined to the view that on the terms of s. 13(2) of the Act, the decision cannot turn on mere burden of proof, but both the parties must lead evidence. The question whether or not there would be greater hardship caused to the tenant by passing the decree must necessarily depend on facts and circumstances of each case.

Under s. 29(2) of the Act as substituted by Gujarat Act 18 of 1965, although the High Court has a wider jurisdiction than the one exercisable under s. 115 of the Code of Civil Procedure, 1908, its revisional jurisdiction could only be exercised for a limited purpose with a view to satisfying itself that the decision was according to law. It cannot be said that the courts below failed to apply their mind to the requirements of s. 13(2) of the Act as to comparative hardship or their finding was manifestly perverse or erroneous. That being so, the High Court could not substitute its own finding for the one reached by the courts below on a reappraisal of the evidence.

It is indeed difficult to appreciate the line of reasoning adopted by the High-Court in non-suiting the plaintiff. On the

(1) [1946] 2 All E.R. 261.

(2) [1946] 2 All E.R. 668.

(3) [1946] 2 All E.R. 672.

(4) [1947] 1 All E.R. 164.

(5) [1947] 1 All E.R. 810.

(6) Halsbury's Laws of England, 3rd Edn. Vol. 23, p. 824.

A admitted facts, the plaintiff is a displaced person from Africa and was carrying on business in Kampala in Uganda. Due to political upheaval in that country, in 1964 he, along with his family, migrated to India and began living in a rented house in Rajkot. He proved that he reasonably and *bona fide* required the suit premises under s. 13(1) (g) of the Act. Admittedly, he has the requisite experience and wherewithal to carry on business, as it is on record that he has been carrying on business in Kampala for over 30 years. The mere fact that the plaintiff had gone back to Uganda for winding up his business there, is not a circumstance against him. On the contrary, it was indicative of his intention to start his business from the suit premises. As against this, the defendant was not in actual possession of the suit premises but had placed one Labhshanker in occupation thereof who had a separate shop of his own and using the suit premises as a godown. Merely because the defendant who was aged and infirm and Labhshanker as his licensee and under an arrangement was paying a fixed amount to the defendant by way of maintenance did not imply that the passing of a decree under s. 13(1) (g) of the Act would cause greater hardship to the defendant than to the plaintiff. Further, the High Court failed to appreciate that perhaps old age and infirmity might have been relevant considerations in judging the issue of greater hardship under s. 13(2) of the Act if the defendant were himself to carry on business from the suit premises and not where, as here, he had admittedly parted with possession in favour of a stranger. It was clearly in error in spelling out a new case for the defendant of the so-called arrangement between himself and a stranger, Labhshanker, for which there is no foundation in the pleadings and which could not in law be pleaded in answer to the plaintiff's claim under s. 13(1)(g) of the Act. That apart, during the pendency of the appeal, the defendant Laxmishanker Tribhoyan having died, the question of greater hardship under s. 13(2) of the Act does not arise.

G For all these reasons, the judgment and order of the Gujarat High Court are set aside and the judgment and decree passed by the courts below decreeing the plaintiff's suit for eviction under s. 13(1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, are restored with costs throughout.