



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1499 OF 2006

Louis Lobo

....Petitioner
(Orig. Defendant)

V/s.

1. Mohamed Yusuf Moosa
2. Parasmal Keshrimal Surana
(deceased)
2(a) Smt. Chandra w/o. Parasmal
K. Surana
2(b) Mahendra s/o. Parasmal K.
Surana
2(c) Prakash s/o. Parasmal K.
Surana
2(d) Mrs. Meena S. Bhora
2(e) Mrs. Kala S. Choradla

...Respondents
(orig. Plaintiffs)

Mr. Clive D'Souza *for the Petitioner.*

Mr. Ravindra Vishnu-Laxmi Sankpal *i/b. R.V. Sankpal & Associates for Respondents.*

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 20 September 2024.
Judgment pronounced on : 01 October 2024.

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JUDGMENT:

- 1) Petitioner/Defendant has filed this Petition challenging the decree dated 9 December 2005 passed by the Appellate Bench of the Small Causes Court allowing Cross Appeal No.26 of 2004 filed by

Plaintiffs thereby decreeing R.A.E. Suit No.1952/5871 of 1985 and directing Petitioner /Defendant to handover possession of the suit premises to Plaintiffs. The Trial Court had decreed the R.A.E. Suit No.1952/ 5871 of 1985 on the ground of acquisition of suitable alternate accommodation by Defendant while rejecting the grounds of unauthorised subletting and *bonafide* requirement. Cross Appeals were filed by both the parties challenging the decree dated 29 April 2003 passed by the Trial Court. Petitioner/Defendant filed Appeal No.227 of 2004 challenging the eviction decree on the ground of acquisition of suitable alternate premises. On the other hand, Plaintiffs filed Cross Appeal No.26 of 2004 challenging the findings of the Trial Court on the issues of unauthorized subletting and *bonafide* requirement. The Appellate Court has answered the issue of acquisition of suitable alternate accommodation in favour of Defendant and against Plaintiff and to that extent, Appeal No.227 of 2004 filed by the Defendant appears to have been allowed. However, Cross Appeal No.26 of 2004 filed by Plaintiffs has also been allowed by accepting the ground of unauthorized subletting while maintaining the finding of the Trial Court on the issue of *bonafide* requirement. In short, the Suit is ultimately decreed by the Appellate Bench only on the ground of unauthorised subletting. The short issue that arises for consideration is whether the decree passed by the Appellate Bench on the ground of unauthorized subletting can be sustained or not.

2) Few basic facts required for decision of the present Petition are that Plaintiffs are landlords in respect of the entire third floor premises of the house known as 'Minoo Mansion' situated at 470-472, Jagannath Shankar Seth Road, Girgaum, Mumbai-400 004 (**suit premises**). According to Plaintiffs, Mr. Philip Lobo was inducted as monthly tenant in respect of the suit premises. Upon death of said Philip Lobo, his son-Mr. Louis Lobo (Defendant) became monthly

tenant in respect of the suit premises. Plaintiffs instituted R.A.E. Suit No.1952/5871 of 1985 against Louis Lobo alleging that he illegally sublet or gave on Leave and License or transferred the suit premises to some third parties, who were in exclusive use and occupation thereof. Plaintiffs also sought recovery of possession of the suit premises on the ground of acquisition of suitable alternate accommodation by the Defendant. Plaintiffs also pleaded their *bonafide* requirement for seeking possession of the suit premises. Defendant appeared in the Suit and filed written statement through his constituted attorney Mr. C.F. Rodrigues. It was pleaded in the written statement that the suit premises were taken on rent by the Residential Club known as 'St. Aleixo Club of Calangute (**the Club**) for working men and that Mr. Philip was a leading member of the said club. That the suit premises were never used nor intended to be used by Mr. Philip Lobo or by members of his family. That the name of Mr. Philip Lobo was used only for convenience and that the rent in respect of the suit premises was always paid from the funds of the Club. Defendant therefore claimed that the Club is actually a lawful sub-tenant or protected licensee.

3) It appears that during pendency of the Suit, Plaintiff - Mohamed Yusuf Moosa sold the building, in which suit premises are located in favour of Mr. Parasmal Keshrimal Surana vide deed of conveyance dated 18 September 1991. Accordingly, original Plaintiff made an application for joining said purchaser- Parasmal Keshrimal Surana as Plaintiff No.2. The application was allowed and said Parasmal Keshrimal Surana was impleaded as Plaintiff No.2 in the Suit. It appears that Defendant filed additional written statement. Both the sides led evidence in support of their respective claims. Plaintiffs examined Mr. Mahendra Parasmal Surana, Plaintiff No.2(b) as their witness. On behalf of Defendant, Mr. John Peter Fernandes,

Power of Attorney Holder of Defendant was examined as DW1. Defendant also examined Mr. Francis Rodrigues, member of the Club.

4) After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the Suit only on the ground of acquisition of suitable alternate premises by the Defendant and by rejecting the ground of subletting and *bonafide* requirement of Plaintiff. Aggrieved by the eviction decree dated 29 April 2003 Defendant filed Appeal No.227 of 2004 before the Appellate Bench of Small Causes Court. Plaintiff also filed Cross Appeal No.26 of 2004 to the extent of rejection of grounds of unauthorized subletting and *bonafide* requirement. By common judgment and order dated 9 December 2005, the Appellate Bench has allowed appeal filed by Defendant by setting aside the finding of the Trial Court on the ground of acquisition of suitable alternate accommodation. However, the decree for eviction is still maintained by the Appellate Court by allowing the cross appeal filed by Plaintiffs by accepting the grounds of unauthorized subletting. The finding of the Trial Court on the issue of *bonafide* requirement is however, maintained. The Defendant is accordingly directed to handover possession of the suit premises to the Plaintiff. Defendant has filed the present Petition challenging the decree passed by the Appellate Bench. By order dated 12 April 2006 this Court admitted the Petition and stayed the decree of the Appellate Court during pendency of the Petition.

5) Mr. D 'Souza, the learned counsel appearing for Petitioner would submit that the Appellate Bench has erred in decreeing the suit on the ground of unauthorized subletting. He would submit that the suit premises were let since inception for use thereof in favour of the Club and Mr. Philip Lobo was functioning merely as its manager. That the Club at that time was not registered, which is a reason why the

tenancy was not created in the name of the Club. That the original Plaintiff No.1 and his predecessors were aware of the fact that the tenancy was created for the purpose of offering residential accommodation to the members of the Club, working at Mumbai. He would urge me to go through the rent receipts placed on record for demonstrating that the same were issued in the name of Philip Lobo as a manager of the Club. He would further submit that Defendant also produced and proved membership register of the Club. This shows beyond any reasonable doubt members of the Club have occupied the suit premises from time to time in accordance with the purpose for which the tenancy was created. That the Club finally got registered in the year 1989. Mr. D'Souza would further submit that there is no discussion by the Appellate Court as to who is the real tenant in respect of the suit premises. Without deciding the question of the real tenant, the Appellate Bench has erred in presuming that the Defendant-sublet the premises in favour of Mr. John Peter Fernandes and Francis Mascarenhas. That if the Appellate Court was to decide the debate about real tenant raised in the written statement and proof of that contention by examining the evidence of record, the finding of unauthorised subletting could not have been recorded. That both Mr. John Peter and Mr. Francis Mascarenhas are members of the Club. Mr. D'Souza would further submit that the Trial Court has rightly relied upon the membership register maintained by the Club since the year 1912 onwards. That the Trial Court had correctly held that members of the Club were occupying the suit premises. That the Trial Court had rightly repelled the ground of unauthorised subletting. That the Appellate Court has erred in reversing the well-considered decision of the Trial Court. Mr. D'Souza would submit that the case is squarely covered by the judgment of the Division Bench of this Court in ***M.J. Talegaonkar V/s. Shri Tejoomal Lakhmichand Narang and***

Ors.¹He would therefore pray that the decree passed by the Appellate Bench be set aside.

6) The Petition is opposed by Mr. Sankpal, the learned counsel appearing for Respondents /original Plaintiffs. He would submit that the Defendant gave specific admission in the written statement that his father Philip Lobo was inducted as monthly tenant in respect of the suit premises. That Defendant's constituted attorney Mr. C.F. Rodrigues resided in the suit premises till filing of the Suit. That he did not file written statement as member of the Club but filed the same in the capacity as constituted Power of Attorney of Defendant. That Defendant's witness gave specific admission that he was residing in the suit premises since the year 1988 and that Defendants were never resided in the suit premises. That he further admitted residence of Mr. Mascarenhas in 1975-1976. Mr. Sankpal would therefore submit that the act of unauthorising subletting is fully and conclusively established in the facts and circumstances of the present case. He would pray for dismissal of the Petition.

7) Rival contentions of the parties now fall for my consideration.

8) Though the Suit was initially filed on the ground of acquisition of suitable alternate accommodation, unauthorized subletting and *bonafide* requirement of Plaintiff, the Suit is ultimately decreed by the Appellate Bench only on the ground of unauthorised subletting. Therefore, the only issue that is involved in the present Petition is whether Plaintiffs have proved the ground of unauthorised subletting for seeking recovery of possession of suit premises from Defendant. Plaintiffs claim that Mr. Philip Lobo was inducted as tenant

¹. 1989 (3) Bom.C.R. 436

in respect of the suit premises and after his death, Defendant-Louis Lobo is the monthly tenant. Defendant joined issue with said contention and contended in the written statement that Mr. Philip was leading member of the Club and that tenancy was created for use by members of the Club and not for use by residence of Philip. Relevant contention raised by Defendant in paragraph 3 of the written statement are as under:

3. With reference to para 3 of the Plaint, the Defendant denies that he has illegally sublet or given on leave and licence basis and/or transferred the suit premises to some third party who is now in exclusive use and occupation of the same in breach of the provisions of the Bombay Rent Acts alleged. The Defendant states that the suit premises were taken up about 65 years back for these of a workingmen(s residential club known as the St. Aleixo Club of Calangute of which Philip Lobo the father of the Defendant abovenamed was a leading member. The said premises were not intended to be used land were in fact, never used for the residence of the said Philip/Lobo and/or the members of his family as such. The said premises were taken in the name of the said Philip Lobo for convenience only and they were meant for the use of the residence only and they were meant for the use of the residence of the members of the said Club and the said Philip Lobo resided therein, not in his individual right as a tenant of the said premises, but as a member of the said club. As the premises were taken in the name of the said Philip Lobo only for convenience, the rent of the said premises was always paid from the funds of the said club. The said Club therefore, is a lawful sub-tenant or protected licensee.

9) Thus, there was debate between the parties about the exact person, who would be the tenant in respect of the suit premises. The Defendant led evidence to prove that the tenancy was actually created for use of the suit premises by members of the Club by relying upon registers of the Club pertaining to the year 1912, 1945, 1966 and 1984. Both the witnesses examined by Defendant viz. John Peter and Francis P. Rodrigues led evidence to prove that they are members of the Club and were accordingly occupying part of the suit premises. In the light of the above pleadings and evidence, it became necessary to first determine the controversy about who is the real tenant in respect of the suit premises. However, it appears that the Trial Court did not frame a specific issue about the real tenant. But, while answering the issue of

unlawful subletting, the Trial Court held that members of the Club were occupying the suit premises. It relied upon the membership register from 1912 onwards and accordingly, the Trial Court proceeded to reject the ground of unauthorized subletting. When the matter travelled before the Appellate Court, the Appellate Court held that since Defendant claimed that the tenancy was created for use of members of the Club, the burden of proving said contention rested on the shoulders of the Defendant. The Appellate Court has held that except the statements of the witnesses, no concrete evidence was produced in support of the contention that tenancy was created in favour of the Club. This is how the Appellate Court proceeded to accept the ground of unauthorised subletting.

10) Though Defendant raised the plea in paragraph 3 of the written statement that the suit premises were taken up by residential club known as St. Aleixo Club of Calangute through one Mr. Philip, its leading member, Defendant also raised a contradictory pleading in the written statement in paragraph 1 as under:

1. With reference to para 1 of the Plaint, it is true and admitted that the said Philip Lobo, the father of the Defendant abovenamed was the monthly tenant in respect of the suit premises until his death about 20 years back. The Defendant further admits that he being the only heir and legal representative of the said Philip Lobo has become the monthly tenant in respect of the suit premises under the Bombay Rent Act.

11) Thus, in paragraph 1, Defendant admitted that Philip Lobo, Defendant's father was tenant in respect of the suit premises. If tenancy was created for the Club, it is unfathomable as to why Defendant gave specific admission in opening portion of its written statement that his father was a monthly tenant in respect of the suit premises. In my view, on account of this specific admission by the Defendant about his father being the monthly tenant, the subsequent defence of tenancy being created by the Club completely falls to the

ground. No amount of evidence therefore sought to be produced by Defendant could have saved him arising out of consequences of clear admission in paragraph 1 in written statement about the tenancy being created in favour of his father.

12) The most striking aspect of the present case is that the Suit was never defended by Mr. Louis Lobo. The written statement was signed by Defendant's Constituted Attorney-Mr. C.F. Rodrigues. Defendant did not step into the witness box and the affidavit of evidence was filed by Francis Paul Rodrigues, constituted attorney of the Defendant and Defendant examined Mr. John Peter Fernandes as his witness. The said witness has been occupying part of the suit premises since the year 1988. He deposed in his evidence that he was occupying the suit premises in his capacity as member of the Club. In cross-examination, he admitted that he was residing in the suit premises since the year 1988 alongwith his wife and child. He further admitted that he has got included his name in the Voter's List on the address of the suit premises. That he used to receive postal correspondence at the suit premises. That he secured gas connection in the suit premises in the name of his wife. That on his bank account also address of the suit premises is reflected. The witness has deposed in the year 2003, which means that for 15 long years the said witness-John Peter continued occupying the suit premises. His evidence indicates that he is a permanent resident of suit premises by creating several documentary evidence at the address of the suit premises. The witness also admitted that another person Mr. Francis Mascarenhas was residing in part of the suit premises since the year 1975-1976. Thus, Mr. Mascarenhas resided in the suit premises for 28 long years.

13) Considering the above evidence on record, there can be no doubt to the position that the suit premises were unauthorisedly sublet

to various occupants, who are residing in the suit premises continuously for a long period of time. This does not appear to be a case where different members of the Club were residing in the suit premises during the course of their visits to Mumbai.

14) Mr. D'Souza has strongly relied upon rent receipts as well as membership registers of the Club in support of his contention that the premises were taken on tenancy basis for use of the members of the Club. As observed above, there is a specific admission about Defendant's father is a monthly tenant in respect of the suit premises. It has also come in evidence that at least two persons were residing in the suit premises with their family members for a continuous period of time. Therefore, it is difficult to accept the contention of Mr. D'Souza that the tenancy was created for the Club or that name of Mr. Peter was reflected as a matter of convenience. It is also a matter of fact that the electricity connection in respect of the suit premises is not in the name of the Club. No efforts are made by the Club to secure electricity connection in its name even after its registration. Therefore, it is difficult to accept that the Club is the real tenant.

15) Even if the Club was to be treated as the real tenant, it could not have permitted its members to reside in the suit premises by treating the same as their 'home'. It is inconceivable that residence by Mr. Mascarenhas in part of the suit premises since 1975-76 is in his capacity as member of the Club. He is residing therein as unlawful subtenant. Similar is the case of Mr. John Peter, who has created all possible proofs of address at the suit premises. Therefore, even if the Club was to be treated as tenant, unlawful subletting to those two persons could otherwise have been inferred.

16) Though Mr. D'Souza has criticised the Appellate Bench for disputing the membership of Mr. John Peter or Mr. Mascarenhas, in my view even if it is accepted momentarily that Mr. John or Mr. Mascarenhas are members of the Club, their continuous residence in the suit premises for years together coupled with creation of several documents at the address of the Club is sufficient for the purpose of holding that occupation of the suit premises by them is not their capacity as members of the Club. It is inconceivable that member of the Club resides in the suit premises for 13 or 28 long years. If indeed the premises were let out to the Club and the Club has allowed its members to reside in the suit premises, the occupant would be rotated periodically. If Mr. Mascarenhas was found to be residing in the suit premises for 28 long years when admission was given by DW1, it is difficult to believe that there was any such rotation by the Club by permitting different members to occupy the suit premises during the course of their visits to Mumbai. Therefore, reliance of Mr. D'Souza on rent receipts or membership register does not assist the case of Petitioner. Even otherwise, the rent receipts were issued in the name of Mr. Lobo and Club's name mentioned on the receipts in brackets against his name cannot be a conclusive factor to infer that tenancy was created in favour of the Club.

17) Mr. D'Souza placed reliance on judgment of the Division Bench of this Court in ***M.J. Talegaonkar***. In my view the judgment would not assist the case of Petitioner as the rent receipts in that case received in the name of the Association. In the present case rent receipts are not issued in the name of the Club. Therefore, it cannot be stated that the fact situation in ***M.J. Talegaonkar*** (supra) is similar to the present case.

18) Considering the overall conspectus of the case, in my view the Appellate Bench has rightly accepted the ground of unlawful subletting. No interference is therefore warranted in the decree passed by the Appellate Bench.

19) Writ Petition is accordingly dismissed. Rule is discharged.

[SANDEEP V. MARNE, J.]

20) After the judgment is pronounced, Mr. D'Souza would pray for continuation of interim order granted by this Court for a period of eight weeks. The request is opposed by the learned counsel appearing for the Respondents. Considering the fact that the interim order has been in operation for considerable period of time, the same shall continue to operate for a period of eight weeks.

[SANDEEP V. MARNE, J.]