A PATEL VALMIK HIMATLAL AND ORS.

v.

PATEL MOHANLAL MULJIBHAI (DEAD) THROUGH LRS.

AUGUST 26, 1998

B [DR. A.S. ANAND AND D.P. WADHWA, JJ.]

Rent and Eviction :

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

C *S. 29(2)—Revisional jurisdiction of High Court—Scope of—Concurrent finding of Courts below that tenant of non- residential premises sublet it without permission of landlord—Held, mere fact that a different view is possible on re- appreciation of evidence cannot be a ground for exercise of revisional jurisdiction—High Court fell into error in re- appraising the entire* D *evidence and recording a finding without any way pointing any error of law or material irregularity, if any, committed by either of the courts below—Even appreciation of evidence by High Court was not correct—Both the Courts below had rightly come to the conclusion that tenant had in fact sublet suit premises and parted with possession thereof without consent of landlord.*

E *Helper Girdharbhai* **v.** *Saiyed Mohmad Mirasaheb Kadri and Others,* **[1987] 3 SCC 538, relied on.**

CIVIL APELLATE JURISDICTION : Civil Appeal No. 7153 of 1996.

F From the Judgment and Order dated 23.12.94 of the Gujarat High Court in C.R.A. No. 984 of 1981.

Ranjit Kumar and H.A. Raichura for the Appellants.

G The following Order of the Court was delivered :

Appellant-landlord filed a suit for recovery of a shop situate at Lati Bazar in city of Bhavnagar which had been let out to the tenant-respondent on a monthly rent of Rs. 111 for the specific purpose of running timber business. Various grounds were taken in the suit for eviction but for the H purposes of the present appeal by special leave we are concerned only with

the ground of sub- letting. A

The case of the appellant-plaintiff in the plaint was that the tenant-defendants were not authorised to sublet, transfer or assign or permit anybody else to make use of the suit property or a part thereof without the consent of the landlord. It was asserted that the tenant-defendants closed down their business of timber and thereafter sublet the premises to Patel Transport Company without consent of the landlord. A public declaration had been made through a newspaper regarding the staring of the business of Patel Transport Company from the demised premises. The suit was contested and insofar as the question of sub-letting is concerned, the tenant-defendants maintained that there was no sub-letting in favour of Patel Transport Company and that in fact the tenant had entered into a partnership with Patel transport Company for running business in the suit premises. The trial court after framing of issues and recording evidence came to the conclusion that sub-letting of the suit premises by the tenant to Patel Transport Company was established and consequently decreed the suit of the landlord. The tenant filed an appeal which was heard by the learned Extra Assistant Judge, Bhavnagar. Vide order dated 16th April, 1981 the appeal was dismissed and the decree passed by the trial court confirmed. The tenant preferred a civil revision application under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act. The High Court in exercise of its revisional jurisdiction set aside the concurrent findings of fact recorded by the trial court and the first appellate court and dismissed the suit filed by the appellant- landlord. By special leave, the appellant-landlord is before us.

We have perused the record and heard Mr. Ranjit Kumar, learned counsel appearing for the appellant. The respondent despite service has chosen to remain absent.

Section 29(2) of the Bombay Rents Act as applicable to Gujarat amendment reads as follows :-

> "29(2). No further appeal shall lie against any decision in appeal under sub-section (1) but the High Court may, for the purpose of satisfying itself that any such decision in appeal was according to law, call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit."

A The ambit and scope of the said section came up for consideration before this Court in *Helper Girdharbhai* v. *Saiyed Mohmad Mirasaheb Kadri and Others*, [1987] 3 SCC 538 and after referring to a catena of authorities, Sabyasachi Mukherji, J. drew a distinction between the appellate and the revisional jurisdictions of the courts and opined that the distinction was a real one. It was held that the right to appeal carries with it the right of B rehearing both on questions of law and fact, unless the statute conferring the right to appeal itself limits the rehearing in some way, while the power to hear a revision is generally given to a particular case is decided according to law. The Bench opined that although the High Court had wider powers than that which could be exercised under Section 115 of the Code C of Civil Procedure, yet its revisional jurisdiction could only be exercised for a limited purpose with a view to satisfying itself that the decision under challenge before it is according to law. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence. Did the High Court exceed its jurisdic- D tion?

The powers under section 29(2) are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to re-hear E the matter and re-appreciate the evidence. The mere fact that a different view is possible on re-appreciation of evidence cannot be a ground for exercise of the revisional jurisdiction.

In the instant case we find that the High Court fell into an error in re-appraising the entire evidence and recording a finding on the basis of F that re-appreciation without in any way pointing out any error of law or material irregularity as may have been committed by the trial court or the first appellate court. In our opinion even the appreciation of evidence by the High Court was not correct. Certain facts were assumed by the High Court which were not on record and generalisation was made without any G basis. In this connection a reference to paragraph 12 of the order of the High Court would be relevant. It reads:-

> "12. This would clearly mean that starting of the said Branch office was clearly recorded in form of a Commission Agency Agreement in Exh. 78, another copy of which is at Exh. 110, and that was done H openly and publicly inviting particularly the business community

to attend the function. If the idea was to sublet the premises, a tenant would hardly be expected to advertise the fact in this manner." A

The question whether or not the premises had been sublet could not be decided on the basis whether a tenant generally is "expected to advertise the fact in this manner". The findings recorded by both the trial court and B the first appellate court based on a critical appreciation of the terms of the agreement Exh. 78 and the evidence led by the parties on the record suffered from no error or material irregularity. Both the courts had rightly come to the conclusion that the tenant had in fact sublet the suit premises and parted with the possession of the premises without consent of the C landlord. There was no error committed by the courts below which required any correction at the hands of the High Court in exercise of its revisional jurisdiction. The judgment of the High Court, under the circumstances, cannot be sustained.

Consequently, this appeal succeeds and is allowed. The judgment of D the High Court is set aside and those of the trial court and the first appellate court are restored. No costs.

R.P. Appeal allowed.