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GUJARAT STEEL TUBE CO. LTD.

v.

VIRCHANDBHAI B. SHAH AND ORS.

OCTOBER 12, 1999

B

[B.N. KIRPAL AND N. SANTOSH HEGDE, JJ.]

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

C

S.11(4)—Suit for eviction of tenant—Non-payment of rent—Application by landlord u/s 11(4) for appropriate orders—Objection by tenant company contending that since a reference had been made to B.I.F.R. u/s. 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985, in view of provisions of s.22 thereof no suit for recovery of money could be filed or proceedings taken against the tenant company—Held, High Court and Appellate Bench of Small Causes Chief Court were right in holding that s.22 of Sick Industrial Companies (Special Provisions) Act did not prevent the filing of an eviction petition on the ground of non-payment of rent and order u/s. 11(4) of Bombay Rent Act could be passed—Sick Industrial Companies (Special Provisions) Act, 1985—S.22.

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Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, [1992] 3 SCC 1, relied on.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 14657 of 1999.

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From the Judgment and order dated 20.8.99 of the Gujarat High Court in C.R.A. No. 1171 of 1999.

Ranjit Kumar, H.A. Raichura and Ms. S.H. Raichura for the Petitioner.

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The following Order of the Court was delivered :

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The respondent had filed a suit against the petitioner herein for eviction of the premises which had been let by the respondents to the petitioner. During the pendency of the suit, an application under Section 11(4) of the Bombay Rent Act was filed. In this application, it was stated that the petitioner herein had not been paying the rent and, therefore,

appropriate orders as contemplated by the said sub-section should be passed. A

In the reply which was filed to the said application, it was, *inter alia*, contended that the petitioner company had become sick and a reference had been made to the B.I.F.R. under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "the Act"). The contention of the petitioner herein was that in view of the provisions of Section 22 of the Act no suit for recovery of money could be filed or proceeding taken against the present petitioner. B

The trial court vide its order dated 25th January, 1999 rejected the said application under Section 11(4) which was filed by the respondent. Thereupon a revision was filed and the Appellate Bench of the Small Causes Chief Court, Ahmedabad by its order dated 12th July, 1999 came to the conclusion that the provisions of Section 22 of the Act were not applicable in such a case. It placed reliance on a decision of this Court in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association*, [1992] 3 SCC 1. The petitioner thereafter filed a civil revision before the High Court but with no success. C D

It is submitted by Shri Ranjit Kumar, learned counsel for the petitioner that in view of the plain language of Section 22 of the Act, the application under Section 11(4) of the Bombay Rent Act was not maintainable. He also contended that no notice as contemplated under Section 12(2) of the Bombay Rent Act had been issued and, therefore, the question of an application under Section 11(4) being filed could not arise. E

It is no doubt true that Section 12(2) requires a notice to be issued in the manner provided by Section 106 of the Transfer of Property Act before a suit for recovery of possession on ground of non-payment of rent can be filed. This is an objection to the maintainability of the suit which will have to be decided when the court takes up for consideration the question as to whether order for eviction should be passed or not. Notwithstanding this objection having been taken, an application under Section 11(4) can be filed. The said sub-section reads as follows : F G

11. Court may fix standard rent and permitted increase in certain cases. H

which had not been paid and, therefore, the court should order payment of rent and at the same time order eviction of the tenant on account of non-payment of arrears. A

For the purpose of considering this contention we will proceed on the basis that the tenancy of the petitioner had been terminated by a notice having been issued under Section 106 of the Transfer of Property Act. In other words, the petitioner was entitled, at the time when the application under Section 11(4) was filed, to the protection of the Rent Control Act and no more. B

Section 22 no doubt, *inter alia*, states that notwithstanding any other law no suit for recovery of money shall lie or proceeded with except with the consent of the Board, but as we look at it the filing of an eviction petition on ground of non-payment of rent cannot be regarded as filing of a suit for recovery of money. If a tenant does not pay the rent, then the protection which is given by the Rent Control Act against his eviction is taken away and with the non-payment of rent order of eviction may be passed. It may be possible that in view of the provisions of Section 22, the trial court may not be in a position to pass a decree for the payment of rent but when an application under Section 11(4) is filed, the trial court in effect gives an opportunity to the tenant to pay the rent failing which the consequences provided for in the sub-section would follow. An application under Section 11(4), or under any other similar provision, cannot, in our opinion, be regarded as being akin to a suit for recovery of money. C D E

We may also point out that this Court in *Shree Chamundi Mopeds Ltd.* (supra) had occasion to consider the question as to whether an application for eviction under the Rent Control Act was maintainable notwithstanding the provisions of Section 22 of the Sick Industrial Companies Act. It was held that on the termination of the contractual tenancy, the Karnataka Rent Control Act, with which the Court was concerned in that case, gave protection to a statutory tenant to continue to occupy the premises but the said right could not be regarded as property of the company for the purpose of sub-section (1) of Section 22 of the Act. The Court held that the provisions of Section 22(1) were not applicable to the eviction proceedings instituted by the landlord against the sick company. It appears to us that the aforesaid principle would be clearly F G H

A applicable in the present case and appropriate orders could be passed under the relevant provisions of the Rent Control Act.

B The High Court and the Appellate Bench of the Small Causes Chief Court were, therefore, right in coming to the conclusion that the provisions of Section 22 of the Sick Industrial companies (Special Provisions) Act, 1985 did not in any way prevent the filing of an eviction petition on the ground of non-payment of rent and that the order under Section 11(4) of the Bombay Rent Act could be passed.

The petition is, accordingly, dismissed.

R.P.

Petition dismissed.