
(2007) 10 BOM CK 0106

In the Bombay High Court

Case No : Writ Petition No. 4142 of 2007

Badriprasad Jamanaprasad Chourasiya

APPELLANT

Vs

Syeffuddin Musaji Master and Another

RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 5(11)

Citation : (2008) 1 ALLMR 697 : (2008) 2 BomCR 772 : (2008) 1 MhLj 326

Hon'ble Judges : S.B. Deshmukh, J

Bench : Single Bench

Advocate : L.V. Sangit, for the Appellant; Swapnil S. Patil, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Deshmukh, J.—Heard respective counsel.

This petition takes an exception to the judgment and order passed by the trial Court below Exhibit 21 in Misc. Civil Application No. 12 of 1978.

2. The petitioner has filed an application under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (said Act) in the Court of learned Civil Judge, J.D., Bhusawal. This application is for fixation of standard rent in respect of the suit property. It is alleged that the suit property is taken on rent by original applicant Fazale Ilahi for running a shop. Original applicant died on 10-10-2006. After his demise, petitioner had filed an application Exhibit 21. In this application, it is alleged by the petitioner that deceased was dealing in the business of fruits. Suit premises was used as office for said business. The petitioner was working as a servant with deceased for several years. At the time of demise of applicant, petitioner was staying along with him. After demise of applicant, the petitioner is looking after business, which was being run by deceased applicant. The petitioner is in possession of the suit property and is also having legal right to proceed with the proceeding as legal heir of deceased. This application is dated 9-1-2007.

The trial Court, after hearing learned Counsel for the parties, rejected the application by the impugned order.

3. Learned Counsel Shri Sangit, appearing for the petitioner has invited my attention to the judgment of the learned Single Judge of this Court in the matter of Kamal Chintaman Mithari and Others Vs. Ganpatrao Ramchandra Powar, . It was a second appeal before the High Court. The dispute was in relation to a house property in "E" ward of Kolhapur, bearing CTS No. 692/1/2. Said property was owned by one Suresh, who sold it to plaintiff therein. Said plaintiff was respondent in the appeal. One Chintamani has rented the said house from Suresh - erstwhile owner, at the rent of Rs. 10/- per month. He was a statutory tenant in respect of the suit premises. Said Chintamani died in or about 1962. In 1965, plaintiff instituted a suit being RCS No. 110 of 1965 in the Civil Court. The plaintiff, in that suit had alleged that Muktabai was the mistress of said Chintamani and was living in the said premises along with Chintamani. After demise of Chintamani, she continued to stay in the suit premises with her children. It was contended by plaintiff that on the death of Chintamani, possession of Muktabai became wrongful and she became trespasser. After serving notice on the defendant, plaintiff filed the suit for possession of the premises. Defendant Muktabai raised several contentions in her written statement. It was contended by her that she was legally married wife of deceased Chintamani and it was denied by her, that she was trespasser in the premises. Civil Court had held that plaintiff had failed to prove that the defendant was trespasser in respect of the said premises, although observed that there was no satisfactory evidence on record about marriage between Chintamani and Muktabai. It is on this premise and facts obtaining in the said case, this Court held that mistress of a tenant, who was living with him along their children, in the disputed premises, at the time of death must be regarded as member of his family for the purpose of Section 5(11)(c) of the said Act.

4. It is opposite to refer to Section 5(11)(c) of the said Act, which reads as under:

(11). "tenant" means any person by whom or on whose account rent is payable for any premises and includes-

(a) ...

(aa) ...

(b) ...

(bb) ...

(c)(i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court;....

5. It is not possible for me to accede to the submission of learned Counsel for the petitioner that, in the facts and circumstances of the present case, the petitioner allegedly was serving as servant with the deceased and can be said to be a member of the family of deceased. The petitioner cannot be held to be a person contemplated by Section 5(11)(c) of the said Act. The judicial pronouncements are good decisions on the facts obtaining in the said judgment. In the case on hand, status of mistress cannot be claimed by the petitioner. Factually, therefore, judgment of this Court, in the matter of Karnal (supra) cannot be made applicable to the case on hand.

6. The trial Court has justifiably considered the provisions laid down u/s 5(11)(c) of the said Act and rejected the application. I see no perversity in the judgment of the trial Court and/or any jurisdictional error in the same.

In the result, writ petition stands dismissed in limine. Ad-interim relief granted earlier stands vacated. No order as to costs.