

(2018) 06 BOM CK 0103
In the Bombay High Court
Case No : WRIT PETITION NO.3238 OF 2004

BHARAT PETROLEUM CORPN.LTD.

APPELLANT

Vs

ACME CONSTRUCTIONS CORPN. AND ORS.

RESPONDENT

Date of Decision : 22-06-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 20 Rule 12
Constitution of India, 1950 — Article 14, 227
Presidency Small Causes Courts Act, 1882 — Section 41
Maharashtra Rent Control Act, 1999 — Section 3(1)(b)

Citation : (2018) 06 BOM CK 0103

Hon'ble Judges : R.G. KETKAR, J

Bench : Single Bench

Advocate : A. Renderia, Meherzeen Avasia,

Final Decision : Dismissed

Judgement

1. Heard Mr. Page, learned Counsel for the petitioner and Mr. Renderia, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant' has challenged the judgment and

decree dated 30th January, 2002 passed by the learned Judge, Court Room No.19, Court of Small Causes at Mumbai in T.E. & R Suit No.131/163 of

2000 as also the judgment and decree dated 17th September, 2003 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Appeal

No.344 of 2002. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as as 'plaintiffs' and

directed the defendant to deliver vacant possession of a piece of land admeasuring 437.24 square yards bearing C.S. No.653 final Plot No.88 (1),

T.P.S. No.II, Mahim Division, situate at Junction of Cadell Road alias Veer

Savarkar Road and Lady Hardinge Road alias T.H. Kataria Marg, Mahim (West), Mumbai - 400 016 (for short 'suit property') within a period of six months. The Courts below have also ordered mesne profits inquiry under Order XX, Rule 12 of the Code of Civil Procedure, 1908 and the defendant to pay mesne profits to the plaintiffs in respect of the suit property from 1st August, 2000 till handing over vacant possession of the suit premises to the plaintiff.

3. In support of this Petition, Mr. Page reiterated the contentions that were raised before the Courts below. He submitted that provisions of Section 41

of the Presidency Small Causes Courts Act, 1882 (for short 'P.S.C.C Act') are not applicable. Section 3(1) (b) of the Maharashtra Rent Control Act,

1999 (for short 'Maharashtra Rent Act') is arbitrary, discriminatory and violative of Article 14 of the Constitution of India and is, therefore, ineffective.

He submitted that Small Causes Court has no jurisdiction to entertain and try the suit. As the plaintiffs did not admit that the defendants are tenants,

the Small Causes Court will have no jurisdiction to entertain and try the suit. He further submitted that the plaintiffs have failed to establish that

plaintiff No.1 is a registered partnership firm. Even otherwise, the Courts below committed error in holding that the notices dated 18th August, 1995

and 30th May, 2000 are valid. He has taken me through the issues framed by the learned trial Judge and the discussion in the judgment of the trial

Court as also points framed by the trial Court and discussion made by the Appellate Court. He submitted that the Courts below committed serious

error in decreeing the suit. He, therefore, submitted that impugned orders deserve to be set aside, thereby, dismissing the suit.

4. On the other hand, Mr. Renderia supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below

have concurrently held that plaintiff No.1 is a registered partnership firm and that the plaintiffs have legally and validly terminated tenancy of the

defendants by notice dated 30th May, 2000. He submitted that having regard to the fact that this is a suit between the landlord and tenant, section 41

of the P.S.C.C Act is applicable and suit is maintainable before the Small Causes Court. He submitted that as far as vires of section 3(1) (b) of the

Maharashtra Rent Act is concerned, the learned trial Judge has referred to the decision of this Court in M/s. Crompton Greaves Limited Vs. State of

Maharashtra, AIR 2002 Bom 65. This Court has upheld validity of section 3(1) (b) in United India Insurance Company Limited Vs. Hongkong and

Shanghai Banking Corporation Limited, 2007 (5) Mh. L. J. 313. The Apex Court has upheld validity of section 3(1) (b) of the Maharashtra Rent

Act in Saraswat Cooperative Bank Limited Vs. Hongkong and Shanghai Banking Corporation Limited, 2007 (5) Mh. L. J. 313 and Leelabai Gajanan

Pansare and others Vs. Oriental Company Limited & Ors., (2008) 9 SCC 720. He, therefore, submitted that as the Courts below after appreciating

the evidence on record have concurrently decreed the suit, no case is made out for invoking powers under Article 227 of the Constitution of India.

Hence, Petition requires consideration.

5. Mr. Renderia submitted that the trial Court had conducted inquiry into mesne profits and by order dated 10th July, 2009, the trial Court determined

the interim mesne profits. Aggrieved by that order, the defendants preferred the appeal before the Appellate Bench of the Court of Small Causes

which is not disposing of the appeal on the ground of pendency of this Writ Petition. He submitted that as the Petition is being disposed of, the

Appellate Court may be directed to dispose of the appeal in a time bound manner.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as section

3(1) (b) is concerned, that issue is no longer resÂntegra. This Court in M/s. Crompton Greaves Limited (supra) and United India Insurance Company

Limited (supra), has upheld validity of section 3(1) (b) of the Maharashtra Rent Act. In case ofÂ Saraswat CoÂoperative Bank Limited (supra) and

Leelabai Gajanan Pansare and others (supra), the Apex Court has upheld validity of section 3(1) (b). I, therefore, do not find that the Courts below

committed any error in holding that defendants failed to prove that provision of section 3(1) (b) of the Maharashtra Rent Act is arbitrary,

discriminatory and ultra vires of Article 14 of the Constitution of India.

7. In so far as notice dated 30th January, 2000 is concerned, the Courts below have concurrently held that the plaintiffs have validly terminated

tenancy of the defendants. The defendants are not in a position to demonstrate that the said finding is perverse being based upon no evidence or that it

is contrary to the evidence on record. In so far as contention of the defendants that plaintiff No.1 is not registered ownership firm is concerned, the

Courts below have concurrently found that the plaintiffs have established that plaintiff No.1 is a registered partnership firm. Having regard to the fact that the suit is between landlord and tenant, the Courts below held that the suit instituted by the plaintiffs under section 41 of the P.S.C.C Act is maintainable. After considering the material on record, I do not find that the Courts below committed any error in decreeing suit. The defendants are not in a position to demonstrate that findings are perverse being based upon no evidence or that are contrary to the evidence on record. The defendants are not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived at by the Courts below. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India.

Hence, Petition fails and the same is dismissed. Rule is discharged with no order as to costs.

8. As the appeal preferred by the defendants against determination of mesne profits is pending before the Appellate Court, the Appellate Court is requested to dispose of the appeal within three months from production of authenticated copy of this order.

9. At this stage, Mr. Page orally applies for continuation of ad interim order granted on 12th April, 2004 for a period of eight weeks from today. He is, however, not in a position to make a statement as to whether the defendants are willing to file usual undertaking in this Court. In view thereof, oral application made by Mr. Page is rejected.