
(2002) 10 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 4395 of 1990

Chandrasekhar Narayan Tambe

APPELLANT

Vs

Dhondusa Sitaram Pawar since deceased through L.Rs Tushar
Balasaheb Pawar

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 5(3)
Civil Procedure Code, 1908 (CPC) — Section 66

Citation : (2003) 1 ALLMR 446 : (2003) 2 BomCR 592 : (2003) 1 BOMLR 916 :
(2003) 1 MhLj 689 : (2002) 1 MhLj 689

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : R.A. Thorat, for the Appellant; Jagdish Reddy, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and Decree passed by the District Judge, Satara, dated July 27, 1990 in Regular Civil appeal No. 84 of 1986. The subject matter of the present petition is a garage of one Khan out of property situate at CTS No. 90, Gurwar Peth, Satara. It is not in dispute that the said property was originally owned by the respondent Plaintiff. However, the said property was purchased by one K. S. D. Shanbag on 27-4-1966, pursuant to the court auction. The name of said Shanbag came to be entered in City Survey Records in respect of the suit property as owner. This fact is not in dispute. However, the respondent claims that the property was purchased in the name of Shanbag by him. It is on this premise the respondent asserts that he continued to be in possession and ownership of the suit property and that inducted the petitioner as his tenant in the demised premises on monthly rent basis on 3-9-1968. Even the petitioner does not dispute that he was inducted by the respondent in the suit premises as tenant. It is also not in dispute that the petitioner paid rent directly to the respondent until December 1976, However, when the petitioner realised that the

real owner of the property was said Shanbag and, since he was called upon to pay rent by owner Shanbag, he started paying rent to Shanbag from January 1977. As monthly rent in respect of demised premises was not received by the respondent, he issued a demand notice sometime on 6-2-1980, claiming arrears of rent with effect from 1-1-1977 to 2-2-1980. Since the petitioner did not offer any rent as demanded, the respondent instituted suit for possession against the petitioner in the Court of Civil Judge, Junior Division being Regular Civil Suit No. 169 of 1981 on the ground of default. The trial court by Judgment and Decree dated March 1, 1985 dismissed the said suit holding that the petitioner has established the fact that respondent was not the owner of the suit premises nor was the landlord. Against this decision the respondent carried the matter in appeal. The appellate court by the impugned Judgment and Decree dated 27-7-1990 was pleased to allow the appeal and decreed the suit for possession in favour of the respondent on the ground of default. The appellate court however concluded that the respondent cannot be treated as the mere rent collector or the agent of the real owner, according to the appellate court since the petitioner was inducted in the suit premises by the respondent; and that the petitioner had accepted the respondent as his landlord, coupled with the fact that he was regularly paying rent to the respondent till December 1976, the inescapable conclusion was that the respondent was the landlord of the petitioner. Since there is no dispute that the petitioner did not offer any rent as demanded in the suit notice, on the above finding, the appellate court proceeded to decree the suit for possession on the ground of default. It is this decision which is subject matter of challenge in the present writ petition under Article 227 of the Constitution of India.

2. On examining the record and the decisions of the two courts below with the assistance of the counsel appearing before this court and after considering their respective submissions, I have no hesitation in taking the view that the appellate court completely misdirected itself in allowing the appeal in favour of the respondent on the abovesaid reasoning. This is so because, even if it was to be accepted that the petitioner was inducted in the suit premises by the respondent and the petitioner was paying rent regularly thereafter to the respondent till December 1976, that by itself would not be sufficient to conclude that the respondent was the landlord in respect of the demised premises or competent to institute suit for possession. The question as to whether the respondent was landlord or not ought to be addressed having regard to the definition of "landlord" in The Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947. Section 5(3) of the Act reads thus :--

"5. In this Act unless there is anything repugnant to the subject or context,--

(1)

(2)

(3) "landlord" means any person who is for the time being, receiving, or entitled

to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant, and includes any person not being a tenant who from time to time derives title under a landlord and further includes in respect of his sub-tenant, a tenant who has sublet any premises; and also includes in respect of a licensee deemed to be tenant by Section 15A, the licensor who has given such licence and in respect of....."

3. On the plain language of this definition, as rightly contended by Mr. Thorat, the respondent does not fit into this definition merely because he was the former owner of the premises or because he had let out the premises to the petitioner or also because he was collecting rent from the petitioner till December 1976. What is relevant to note is that on the date of institution of the suit in 1981 or for that matter on the date of issuance of the demand notice on 6-2-1980, the respondent was not a person competent to receive or entitled to receive rent in respect of the suit premises on his own account as he was not the owner thereof nor on behalf or for the benefit of the real owner of the premises. For the respondent had no such authority from the real owner to collect the rent in respect of the suit premises. On the other hand, the real owner of the premises called upon the petitioner to pay the rent directly to him and the petitioner has satisfied that requisition. It cannot be disputed that the petitioner was inducted by the respondent in the suit premises when he was not the legal owner thereof after the court auction on 27-4-1966 nor it is his case that at the relevant time when the petitioner was inducted in 1968 he was occupying the premises as the tenant of the real owner. Understood thus, the respondent had no authority of any manner to let out the premises or to collect the rent on his own or on account of the real owner. In such a situation, if the tenant (petitioner) having stopped paying the amount towards rent to the respondent and instead started paying directly to the real owner / landlord cannot be faulted nay would not give any cause of action to the respondent to seek possession of the suit premises on the ground of default u/s 12 of the Act. No doubt the respondent asserted in the plaint as well as deposed before the court that he had paid the price and purchased the suit property in the name of one Shanbag. However, such a plea was unavailable to the respondent having regard to the provisions of Section 66 of the CPC as it stood at the relevant time. Section 66 would have precluded the respondent to contend that he was the real owner as against the said Shanbag. In the present case the heir of said Shanbag deposed in favour of the petitioner tenant that at no point of time the respondent was either authorised or had authority to collect rent on behalf of the real owner from the petitioner. Accordingly, the fact situation that has emerged from the evidence on record, which has gone uncontroverted, is that the respondent is neither the owner of the premises nor entitled to receive the rent or had authority to receive rent in respect of the demised premises at the relevant time when the action was instituted. If that be so, he cannot be labelled as the landlord even within the

wide meaning of Section 5(3) of the Act. As a consequence of which, the suit as filed by him could not be pursued before the Rent Court u/s 28 of the Act which has jurisdiction to adjudicate matters between landlord and tenant. Whereas the appellate court proceeded to answer the matter only on the premise that the petitioner was inducted by the respondent in the suit premises and that the petitioner was regularly paying rent to the respondent for some time so as to hold that he was the landlord, which conclusion overlooks the requirement u/s 5(3) of the Act. Understood thus, the view taken by the appellate court cannot be sustained as the same is completely misdirect approach in deciding the point in issue. In my opinion, the trial court was right in dismissing the suit holding that the suit at the instance of the respondent could not be entertained as he was not the owner nor the landlord within the meaning of Section 5(3) of the Act. In the circumstances, petition succeeds, impugned order is set aside. Consequently the suit instituted by the respondent is dismissed with costs all throughout. Certified copy expedited.