

(1989) 06 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 1776 of 1980

Dnyanu Babu Mali (Jambhalikar)

APPELLANT

Vs

Khajesha Hanifsha Abdul Bhandari and Others

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13
Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 108

Citation : (1989) 91 BOMLR 568

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.L. Pendse, J.—The Petitioner is tenant of premises situated in City Survey No. 5759-C at Mangal Talkies, Miraj and the petitioner is running a canteen in the said premises. The premises were let out in the year 1952 on a monthly rent of Rs. 35/-. The landlord terminated the tenancy and instituted suit in the year 1974 on the grounds: (1) default in payment of rent (2) conduct of tenant resulting into nuisance and annoyance (3) that the act committed by the tenant amounts to breach of Section 108(o) of the Transfer of Property Act, and (4) that the tenant has erected a permanent structure in the premises without the prior consent in writing of the landlord.

2. The Trial Court, after recording evidence, decreed the suit on three grounds and held in favour of the tenant on the ground of default. The tenant carried appeal before the District Court, Sangli and the appeal was dismissed. The Lower Appellate Court upheld the decree of eviction only on the ground of erecting permanent structure in the suit premises. The judgment dated February 22, 1960 passed by the District Judge, Sangli, is under challenge in this petition filed under Article 227 of the Constitution of India.

3. Mr. Shah, learned Counsel appearing on behalf of the petitioner submitted that

the finding of the two Courts below that the tenant had erected a permanent structure on the premises is not correct. There is considerable merit in the submission of the learned Counsel. The charge against the tenant was in the year 1972, the tenant constructed a water tank of 7 1/2 ft. x 4 ft, and height of about 4 1/2 ft. The tank was constructed in cement concrete and it was used for the purpose of storing water. The landlord claims that the construction was made without prior written permission and defence of the tenant that such permission was secured is not accepted by both the Courts. The short question for determination is whether the construction of a water tank amounts to erection of a permanent structure. In my judgment, taking into consideration the fact that the water tank is constructed on the premises where canteen is run and the fact that there was chronic shortage of water at Miraj, it is difficult to hold that the construction attracts the provisions of Section 13(1)(b) of the Rent Act. The water tank is an absolute necessity in most of the residential premises and more so in a canteen where the water required is of large quantity. If the tenant constructed a water tank for storage of water instead of purchasing drums to store it is difficult to conclude that the tenant is guilty of erecting permanent structure. Miss Dandekar, appearing on behalf of the landlord, submitted that the construction has caused damage to the suit premises and in support of the submission referred to the observation made by the trial Judge in paragraph 8 of the judgment. The observation reads as under:-

The eastern wall of the suit premises has got a crack due to the negligent use of the suit premises by defendant No. 1 and the building has gone into a dilapidated condition.

From this observation, it is difficult to jump to the conclusion that the crack in the eastern wall was due to the construction of water tank. The observation indicates that the crack was due to the negligent use of the premises. In these circumstances, it is difficult to sustain the decree passed by the two Courts below on the ground of construction of permanent structure on the suit premises.

4. Accordingly, petition succeeds and rule is made absolute. Decree of eviction passed by the two Courts below is set aside and the suit is dismissed as far as the claim for possession is concerned. The petitioner shall pay the costs as the petitioner was in arrears of rent though not for six months.