
(1996) 12 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 5967 of 1996

Harjot Singh Jaspal and Others

APPELLANT

Vs

Koran Govindan and Others

RESPONDENT

Date of Decision : 10-12-1996

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 49
Bombay Rents, Hotel and Lodging House Rates Control Rules, 1948 — Rule 5, 7
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97

Citation : (1997) 4 BomCR 435

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Shekhar Naphade and C.H. Gautam, for the Appellant; K.A. Sampat and A.G. Sampat, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—Heard learned Counsel for the petitioner and respondent No. 1.

2. Mr. Naphade, learned Counsel for petitioners has raised two-fold contentions :
(i) that the Small Causes Court had no jurisdiction to entertain the obstruction notice taken out by the respondent No. 1 in execution of the decree passed in his favour in R.A.E. Suit No. 528/1780 of 1984 since according to the decree-holder the petitioners were trespassers ;and (ii) that the executing Court failed to exhibit the agreement of lease dated 28-10-94, xerox copy of which was placed on record by the petitioners, and, prejudged the entire defence of the petitioners at that stage.

3. I have considered the contentions raised by the learned Counsel for the petitioners and have also perused the impugned orders and the available relevant material placed on record. The respondent No. 1 herein Koran Govindan filed a suit for eviction against his tenant "Hotel Horizon Private Limited" in the Court of Small Causes at Bombay which was registered as R.A.E. Suit No. 528/1780 of 1984 on the ground of reasonable and bona fide necessity. The said

suit after contest and on trial was decreed by the Court of Small Causes on 2nd March-1992. An appeal was carried against the judgment and decree by the tenant before the appeal bench of Small Causes Court and the judgment and decree for eviction was upheld by the appeal bench on 8-3-1994. Dissatisfied with the concurrent judgment and decree for eviction passed on the ground of reasonable and bona fide necessity by two courts, the tenant filed the writ petition before this Court. The writ petition too was dismissed on 8-8-1994. The tenant challenged the aforesaid orders in SLP before the Apex Court, and, the Supreme Court also on 25-10-1994 dismissed this SLP filed by the tenant. Thus, the decree for eviction passed against the tenant become final right upto the Apex Court. The decree-holder levied execution of that decree and since the obstruction was put by the present petitioners, the decree-holder took out obstruction notice which was registered as obstruction notice 30/94. The said obstruction notice was taken out under Order 21, Rule 97 and after recording the evidence, the Court below passed the order on 25th July-96 making the obstruction notice absolute. Aggrieved by the order passed by the trial Court on 25-7-96 the present petitioners filed appeal before the appeal bench and the appeal also met the same fate and the order passed by the trial Court was maintained. The said two concurrent orders making the obstruction notice absolute by the trial Court and said order have been upheld in appeal are subject matter of challenge in the said petition.

4. The first contention raised by the learned Counsel for the petitioners that the Small Causes Court had no jurisdiction to entertain obstruction notice is absolutely without any merit and is misconceived. Section 28 of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 deals with the jurisdiction of the courts and according to the said provisions in Greater Bombay the Court of Small Causes has jurisdiction to entertain and try the suit or proceeding between a landlord and tenant relating to the rent and recovery of possession. Section 31 of the said Act provides that the courts specified in sections 28 and 29 shall allow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals, and in executing orders made by them. Section 49 enables the State Government to frame necessary rules including the procedure to be followed in trying or hearing suits (including proceedings for execution of decrees and distress warrants), applications, appeals and execution of orders. Rule 8 of the Bombay Rent Act, Rules which falls in Chapter-IV provides that in suits and proceedings other than those referred to in Rules 5 and 7, the Court of Small Causes, Bombay, shall, as far as may be and with necessary modification follow the procedure prescribed for a Court of first instance by the Code, including Order XXXVII as modified in its application to the State of Bombay. Thus, it is clear that the Small Causes Court while dealing with suits and proceedings under that Act except those covered in Rule 5 and 7 has to follow the prescribed procedure under the CPC as far as applicable. Clearly the provisions contained under Order 21 of CPC are applicable for execution of the decrees for eviction passed by the Small Causes Court. In

execution of such decree if any obstruction is put by any person including the judgment debtor or somebody at his behest or by third party, the matter has to be dealt with by executing Court i.e. Small Causes Court in accordance with the procedure contemplated under Code of Civil Procedure. In this view of the matter, it cannot be said that obstruction notice under Order 21, Rule 97 could not have been taken out by the decree holder when an obstruction was put to the possession by the petitioners. Order 21, Rule 101 provides that all questions (including questions relating to right, title and interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representative, and relevant to the adjudication of application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

5. First objection, therefore, raised by the learned Counsel for the petitioners is without any substance.

6. Adverting to the second contention raised by the learned Counsel for the petitioners that the xerox copy of the agreement dated 28-10-94 was wrongly refused to be exhibited and read in evidence and that the trial Court prejudged the entire case at the time of considering the question whether the secondary evidence of the agreement should be allowed or not, it may be observed that the trial Court as well as the appeal bench have found the case set-out by the petitioners in reply to the obstruction notice that by an agreement dated 28-10-94 they were inducted as tenant by the decree-holder as false and concocted. On the face of palpably false case set-out by the petitioners, if the trial Court refused to permit secondary evidence and exhibit the xerox copy of purported agreement of lease dated 28-10-94, it cannot be said that courts below acted illegally or with material irregularity in exercise of their jurisdiction. It would not be out of place to mention here that petitioner No. 1 Harjot Singh Jaspal is Manager of the judgment-debtor tenant Hotel Horizons Pvt. Ltd. against which a decree for eviction has been affirmed right upto the Apex Court. As a matter of fact, during course of arguments, Mr. Naphade, learned Counsel for petitioners even did not dispute that presently also the petitioner No. 1 is in employment as Manager with the original tenant-judgment debtor Hotel Horizons Pvt. Ltd. In this fact situation and background the case sought to be set-out by the present petitioners that they were inducted as tenant pursuant to the agreement dated 28-10-94 cannot be believed and rightly rejected by the courts below. Rather it is a clear case of thwarting the process of law in not letting the decree of possession upheld right upto the Supreme Court executed by raising untenable, misplaced and false pleas.

7. No case for interference is made-out in the impugned order by this Court under Article 227 of Constitution of India. Writ petition accordingly has no merit and is dismissed in limine.

8. Mr. Naphade orally prays for some time. I am afraid looking to the entire background and conduct of the petitioners, they are not entitled to any time whatsoever, and, oral prayer made by the learned Counsel for petitioners is rejected.