
(2008) 12 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No. 1067 of 1992

Janardan Subajirao Wide

APPELLANT

Vs

Rangubai Ramchandra Jagdale and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 15(1)

Citation : (2009) 1 BomCR 594 : (2009) 2 MhLj 223

Hon'ble Judges : Mohta Anoop V., J

Bench : Single Bench

Advocate : T.D. Deshmukh, for the Appellant;

Final Decision : Allowed

Judgement

Mohta Anoop V., J.—The Petitioner is a original Defendant-Tenant, has challenged the impugned order of Court below whereby, the landlord/Respondents" case of sub-tenancy u/s 13(1)(b) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short, "the Bombay Rent Act") is confirmed and thereby allowed the landlords" case of eviction on that ground only.

2. The lease premises is situated at C.T.S. No. 1873, Bhamburda, Pune, consists of 2 blocks (for short, "the suit premises"). The suit premises were let out for running a hotel. As averred, accepted by the Court below that the petitioner"s have transferred the said property in favour of one Krishna Shetty without permission and consent. It is contended specifically that the Petitioners never parted with the possession of the property. He is very much there and now he is doing business exclusively. Though there is material to show that he had assigned his business in favour of one Krishna Shetty, a deed of partnership Exhibit 51 and agreement whereby it was accepted that Krishna Shetty was his partner in the business of hotel. That was a partnership between the Defendant, his brother and the third person K.B. Shetty.

3. Under proviso to Section 15(1), of the Bombay Rent Act, it is permissible for the statutory tenant to transfer his tenancy right, as a going concern, even though the agreement prevented such transfer without previous consent of the landlord. Admittedly, the person running business goodwill and stock in trade had been assigned as permissible under the said provisions. As observed and held in *Swastik Rubber Products Ltd. and Another Vs. Vasantrao Mahadeo Dhatingan*, by the Division Bench of this Court, that such assignment of premises whether contract contains prohibition or without consent of landlord, is permissible. Therefore, the assignment of leasehold premises by the Defendants was not sub letting. This Judgment is clearly cover the case of the Petitioners also.

4. It is brought to the notice during the course of argument that said sub-tenant Krishna Shetty had filed Special Civil Suit No. 623 of 1986 against the Petitioner/tenant is already dismissed. The reference of the suit is made in the impugned order.

5. In the present case, additional factor is that the Petitioner never parted or left the premises. Being a partner, he was also involved in the business. The dominant purpose of this agreement was not to sub-let the premises. The Apex Court in *Mahendra Saree Emporium Vs. G.V. Srinivasa Murthy*, , held that so long as legal possession remains with the tenant the mere factum of the tenant having entered into an agreement of partnership for the purpose of carrying on the business in the tenancy premises would not amount to sub-letting, *Parvinder Singh Vs. Renu Gautam and Others*, .

6. In the present case also, in view of this Judgment I see, there is no case made out by the landlord, of sub-tenancy. The eviction order passed by the Court below on this ground is, therefore, wrong. Therefore, taking all this into account, I am inclined to interfere with the order passed by the Court below. The decree of eviction/possession, is therefore, quashed and set aside. The suit of the plaintiffs is dismissed.

7. The Petition is, accordingly allowed in terms of prayer Clause (b). Rule made absolute. No order as to costs.