

(1998) 01 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 4571 of 1986

Keshav Raghunath Deshpande and others

APPELLANT

Vs

Dattatraya Anant Ravetkar (deceased) by Lrs. and others

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

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

Citation : (1998) 3 ALLMR 590 : (1998) 5 BomCR 263 : (1998) 2 BOMLR 34

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : Smt. A.C. Agarwal, for the Appellant; Apte and Company, for the Respondent

Judgement

D.K. Deshmukh, J.—By this petition filed under Article 227 of the Constitution of India, the petitioners challenge the order passed by the IIInd Extra Joint District Judge, Pune in Civil Appeal No. 305 of 1985. That appeal was filed by the petitioners challenging the judgment and decree dated 30-7-1984 passed by the Addl. Judge Small Causes Court, Pune in Civil Suit No. 322 of 1980. That civil suit was filed by the predecessor-in-title of the respondent by name Dattatraya Anant Ravetkar, claiming therein that the plaintiff is the owner of the suit premises, which consists of two rooms on the first floor of the building owned by the plaintiff landlords, which is being occupied by the defendants as tenants. The landlord sought decree of eviction against the tenant on several grounds including the ground that the tenant has acquired suitable residence and that the landlord needs the suit premises for their bona fide occupation. The trial Court recorded findings in favour of the landlord only on one ground, namely, that the tenants have acquired suitable alternate residence. The Trial Court found against the landlord on other grounds. The Trial Court, however, decreed the suit in favour of the landlord and directed the tenant to vacate the suit premises. The tenants feeling aggrieved by the judgment and decree of the trial Court preferred an appeal before the Appellate Court. The Appellate Court confirmed the findings recorded by the trial Court that the tenants have acquired suitable residence.

The Appellate Court also found in favour of the landlord on the ground of bona fide need of the landlord.

2. The learned Counsel for the petitioners first urged that the finding recorded by the courts below that the tenant has acquired suitable residence is not correct in as much as the flat which according to the landlord was acquired by the tenant was not really acquired by the tenant. Because though the flat and the construction stands in the name of the defendant No. 2, her brother has spent for raising construction on the plot and till she pays an amount of Rs. 40,000/- to her brother, she cannot get possession of the premises, as a result of the agreement between them. Perusal of the record, however, shows that both the courts below have considered entire evidence on the record in this regard minutely and have dealt with the evidence in detail. Both the Courts below have concurrently found that the case put up by the tenant about the agreement between the defendant No. 2 and her brother cannot be believed. Thus it is clear that the findings recorded by both the courts below on this ground is a finding of fact and it is recorded by the courts below after appreciating the evidence on the record. Therefore, in my opinion, as the finding recorded by the courts below is concurrent finding of fact, it cannot be interfered with by this Court.

3. The learned Counsel for the petitioners then urged that as the defendant No. 1 could not be examined as a witness because he was ill and was admitted in hospital, the Appellate Court could have remanded the matter back to the trial Court. However, perusal of the judgment of the Appellate Court shows that though it is the case of the tenant that the defendant No. 1 could not be examined as a witness on 23rd July, 1984 because he was hospitalised, the Court has found that there was no application for adjournment made on behalf of the defendants on that ground. The Appellate Court, further found that even according to the tenant, the defendant No. 1 was discharged from hospital on 25-7-1984 and on that day also the suit was fixed for recording evidence. Therefore, if the tenant defendants were really keen to record the evidence of defendant No. 1 they could have done soon 25-7-1984. The Court has further found that on 25-7-1984 the suit was adjourned to 30-7-1984 for the judgment and then if the defendants were actually keen to examine the defendant No. 1 as a witness, they could have moved the Court before 30th July, 1984 with the request to permit the defendant No. 1 to be examined as witness. The Appellate Court has, therefore, rejected the prayer for remand of the matter to the trial Court. I do not find any fault in the findings recorded by the Appellate Court in this regard. As I have found that both the courts below have correctly recorded finding in favour of the landlord on the ground of acquisition of suitable accommodation by the tenant, I do not find that it is necessary for me to go into question of bona fide need of landlord.

4. In the result, therefore, the petition fails and is dismissed. Rule discharged with no order as to costs.

5. At this stage the learned Counsel for the petitioners requests that the

petitioners should be given a reasonable time to vacate the suit premises. In her submission time upto 31-12-1998 would be a reasonable time as the suit premises have been occupied by the tenant for a long time. Considering that the petitioners have been residing in the suit premises for a long time, it is directed that the decree of eviction passed against the petitioners shall not be executed for the period ending with 31-12-1998 subject to the condition that within 4 weeks from today, the petitioners submit an undertaking to this Court in the usual form. Failure of the petitioners to submit undertaking within the aforesaid period shall, however, entitle the landlord to execute decree immediately.

6. Petition dismissed.