

(2004) 07 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 2737 of 1991

Kishanchand Ottamlal Anandani

APPELLANT

Vs

Shankar Bapu Sawant since deceased by L.Rs.

RESPONDENT

Date of Decision : 02-07-2004

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)
Evidence Act, 1872 — Section 116

Citation : (2005) 1 ALLMR 181 : (2005) 1 BomCR 362 : (2004) 4 MhLj 757

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : S.R. Banawadikar, for the Appellant; N.D. Hombalkar, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karnik, J.—By this petition, the petitioner challenges the judgment and order passed by the Additional District Judge, Sangli on 7th March, 1991 dismissing Civil Appeal No. 257 of 1986 and confirming a decree for possession passed against the petitioner-tenant by the Civil Judge, Junior Division, Sangli.

2. The petitioner was inducted as a tenant in the suit premises by Shankar Bapu Sawant, the original respondent herein, who has died during the pendency of the suit and is being represented by his legal representatives. Sometime after the petitioner was inducted as a tenant, one Subanna Vithal @ Ramchandra Nalawade disputed the title of the, respondent No. 1 and claimed himself to be the owner. He also addressed two notices one dated 7th April, 1981 and another dated 14th July 1984 to the petitioner claiming that he was the owner of the property and the respondent was not the owner. In view of the dispute between the respondent and s Subanna Vithal @ Ramchandra Nalawade, the petitioner stopped paying rent to the respondent. Hence, the respondent by a notice terminated the tenancy of the petitioner and demanded arrears of rent. The petitioner did not pay the arrears of rent within one month but filed an

application for fixation of standard rent. However, the petitioner did not deposit the arrears in the Court.

3. The respondent filed a suit for possession on the ground of default. The petitioner contested the suit and contended that the respondent was not the owner of the property but the property belonged to Subanna Vithal @ Ramchandra Nalawade and therefore he was not liable to pay the rent to the respondent. The trial court decreed the suit holding that the respondent was the owner and the landlord of the suit premises and that despite demand in writing, the petitioner had failed and neglected to pay the arrears of rent within one month and therefore he was a defaulter.

4. On appeal, the appellate Court also held that the respondent was the owner and the landlord of the suit property. It also held that the petitioner was in arrears of rent for more than six months and that he had failed and neglected to pay the arrears of rent despite notice of demand and therefore was a defaulter. The appellate Court also noted that though an application for fixation of standard rent was filed in fact there was no dispute between the parties about the amount of standard rent and the dispute was only as to whether the respondent or Subanna was the landlord. The appellate Court also noted that though the standard rent application was filed, the respondent had not deposited the arrears of rent nor had he continued to deposit the rent regularly in court and therefore he was liable to be evicted. The appellate Court further held that the respondent was also entitled to a decree of possession on the ground of disclaimer of title by the petitioner.

5. Learned counsel for the petitioner submits that Subanna had issued a notice to the petitioner claiming ownership and calling upon the petitioner to pay the rent to him. The petitioner was therefore in a quandary as to whom he should pay the rent. The petitioner was ready and willing to pay the rent and would have paid the rent to the respondent but for the dispute raised by Subanna. He further points out that the respondent in his deposition had admitted that prior to the notice of Subanna the petitioner had paid the rent regularly and would have continued to pay the rent regularly but for the notice of Subanna. In view of this he submits that the decree for eviction has been wrongly passed by the courts below.

6. It is not disputed that the petitioner was inducted as a tenant in the suit premises by the respondent. u/s 116 of the Evidence Act, it was not open for the petitioner to deny the title of the respondent which he did by filing of the written statement. The fact that Subanna had challenged the title of the respondent could not be a reason for the petitioner to dispute the title of the respondent. In para 7 of its judgment, the appellate Court has observed :

"At the time of hearing of the appeal, learned counsel for appellant Shri Khadilkar has conceded before me that the respondent is a landlord of the premises."

The concession was clearly right in view of the mandate of Section 116 of the Evidence Act. The petitioner was bound to pay the rent to the respondent which he failed to pay despite the notice of demand and even failed to comply with the provisions of Section 12(3)(b) of the Bombay Rent Act. Hence, there is no merit in the petition which is hereby dismissed.

7. Rule discharged with no order as to costs.