
(1958) 04 BOM CK 0018

In the Bombay High Court

Case No : Civil Revision Application No. 272 of 1958

Mohmed Haji Noormohamed

APPELLANT

Vs

Mona Vicaji Javeri

RESPONDENT

Date of Decision : 29-04-1958

Acts Referred:

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

Citation : (1958) 60 BOMLR 1096

Hon'ble Judges : Miabhoy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Miabhoy, J.—This revision petition arises out of an order made by the appellate Bench of the Small Causes Court, Bombay.

2. The first point which is raised in this petition by Mr. Shah, who appears on behalf of the petitioner, is that the suit which was filed by the opponent against the petitioner in the Small Causes Court for recovering possession of the premises u/s 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, was not competent because of a certain order passed by the learned Chief Judge of the Small Causes Court u/s 507 of the Bombay Municipal Corporation Act, 1888. The point was raised both before the trial Judge and the appellate Bench of the Small Causes Court. Both the Courts have recorded a finding against the contention. In order to dispose of this contention, it is necessary to state the following facts.

3. The petitioner is the tenant and the opponent is the landlady of a shop situated in a building known as "Javeri building". On August 25, 1956, the acting City Engineer gave a notice to the opponent u/s 354 of the Bombay Municipal Corporation Act, requiring her to demolish a certain portion of her building. On October 12, 1956, the same officer gave a second notice to the landlady requiring her to pull down the remaining portion of the building. On December

27, 1956, the landlady gave a notice to the petitioner to give her facilities to comply with the requisition made by the Municipal authority in the two notices. The petitioner, however, did not afford these facilities. Consequently, u/s 507 of the Bombay Municipal Corporation Act, the landlady made an application to the learned Chief Judge of the Small Causes Court, Bombay, for a direction requiring the petitioner to afford to the opponent-landlady all reasonable facilities for complying with the requisitions made in the two notices. The learned Chief Judge made an order on March 7, 1957. By that order the learned Chief Judge directed the petitioner to afford the opponent all reasonable facilities for complying with the requisitions contained in the two notices given by the municipal authorities, in particular by removing himself and all other persons and goods from the said shop by April 30, 1957, and to give leave and licence to the opponent, her workmen etc., to enter the premises for the requisite time to carry out the demolition work mentioned in the notices. However, in spite of the order, it appears that the petitioner did not afford any facilities to the opponent to comply with the requisition contained in the two notices. Consequently, on May 27, 1957, the opponent filed the suit from which the present application arises. That suit was filed u/s 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The relevant portion of that section is as follows

13(1) Notwithstanding anything contained in this Act (but subject to the provisions of Section 15), a landlord shall be entitled to recover possession of any premises if the Court is satisfied....

(hhh) that the premises...are...required for the immediate purpose of demolition ordered by any local authority or other competent authority;...

The contention of Mr. Shah is that once the learned Chief Judge made an order u/s 507 of the Bombay Municipal Corporation Act, the suit was not competent. The contention was based on the ground that when the landlord is served with a notice u/s 354 of the Bombay Municipal Corporation Act, then, he has two remedies before him, and if he chooses one of these two remedies, then, he cannot avail himself of the second remedy. His contention is that the landlord can either proceed against the refractory tenant u/s 507 of the Corporation Act or u/s 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, but not under both. I do not agree with this contention. In my opinion, the objects of the two sections are entirely different. So far as Section 507 is concerned, the object is not to dispossess the tenant, but the object is only to give a direction to the tenant to afford facilities to the landlord to demolish the building. Possession remains with the tenant, the tenancy continues, and the landlord has only a right of entry into the demised premises which entry he, otherwise, could not have made without committing the tort of trespass. The scope of Section 13(1)(hhh), on the contrary, is entirely different, Under that section, the landlord is not merely entitled to a right of entry into the demised premises, but he is entitled to recover possession of the demised premises, and that right can be enforced by the tenant only if the contractual tenancy has come

to an end. Therefore, in my opinion, the two sections do not deal with a situation which is in *pari materia*, and the objects of the two sections are quite different. In my opinion, simply because the opponent in the present case has availed herself of the remedy, which was given to her u/s 507 of the Corporation Act, it cannot be said that she is disentitled to the further remedy which the statute has provided to her u/s 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act.

4. The second branch of the argument, also based upon, the two sections, as developed by Mr. Shah, was as follows : He contended that Section 13(1)(hhh) is not applicable to the facts of the present case, because it cannot be said that the demolition of the premises was required to be made as a result of the order of any local authority. The contention was that as the opponent had obtained an order u/s 507 of the Bombay Municipal Corporation Act, under Sub-section (3) of that section, the opponent was exonerated from her responsibility towards the municipal authorities for non-compliance with the requisitions contained in the notice. Therefore, Mr. Shah contended that the result was that the opponent no longer required the premises for the purpose of demolishing them as a result of the order of any local authority. I do not agree with this contention. The mere fact that the opponent has obtained an order u/s 507 of the Bombay Municipal Corporation Act does not terminate the necessity of demolishing the aforesaid premises. On the contrary, the fact that the petitioner is recalcitrant and does not afford facilities to the opponent to demolish the building emphasises the fact that the demolition is required to be made all the more. I do not think it would be proper to construe the provisions of Section 13(1)(hhh) in such a manner as to put a premium upon the intransigence and refractoriness of the tenant. In my opinion, if the landlord has taken proceedings u/s 507, and in spite of an order under that section the tenant is adamant and does not afford any facilities, then, though this act of refractoriness on the part of the tenant might exonerate the landlord from the liability under the Corporation Act, the requirement of the landlord to demolish the building remains intact, and that, that requirement does not cease. In my opinion, unless and until one comes to the conclusion that the requirement ceases because of the refractory attitude of the tenant, Clause (hhh) would still come into play. Therefore, there is no substance in any of the two branches of the argument advanced by Mr. Shah.

5. The rest of the judgment is not material to this report.