
(1998) 02 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 612 of 1997

Narahari Vishnu Lanke

APPELLANT

Vs

Narayan Ganpat Pisal and others

RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Constitution of India, 1950 — Article 227

Citation : (1998) 3 ALLMR 763 : (1998) 4 BomCR 747 : (1998) 2 BOMLR 32

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

Bench : Single Bench

Advocate : R.M. Tipnis, for the Appellant; M.D. Angal, for the Respondent

Judgement

D.K. Deshmukh, J.—By this petition filed under Article 227 of the Constitution of India, the petitioner challenges the order passed by the Division Bench of the Small Causes Court at Bombay dated 24-7-1986 in Appeal No. 377 of 1978. That appeal was filed by the petitioner challenging the order dated 28-3-1978 passed by the Single Judge of the Small Causes Court at Bombay in R.A.E. & R. Suit No. 3357 of 1970. That suit was filed by the petitioner claiming that he is owner of building known as "Lanke Building" situated at 8, Dhuswadi, Bombay- 02 and that the respondent No. 1 Narayan is a tenant of a single room No. 52 in the said building. The landlord sought decree of eviction against the tenant on several grounds namely, that the tenant is not ready and willing to pay rent: that the tenant has unlawfully sublet the suit premises and that the tenant has changed the user of the premises. The trial Court found against the landlord on all the grounds and dismissed the suit. In the appeal filed by the landlord, the Appellate Court confirmed the findings recorded by the trial Court and dismissed the appeal. In this petition filed by the landlord therefore, the order passed by the Appellate Court under the Bombay Rent Act is challenged.

2. When the petition was called for final hearing none appeared for the petitioner. However, with the help of the learned Counsel appearing for the respondent No.

1, I have gone through the record of the case. Perusal of the record reveals that in so far as the ground of default committed by the tenant in payment of rent is concerned the trial Court has held that the demand notice was illegal because the demand notice was not issued to all the legal representatives of the deceased tenant. However that finding was reversed by the Appellate Court and the Appellate Court has held that service of demand notice on the respondent No. 1 was legal and proper because he was the tenant of the suit premises. However the Appellate Court found that the landlord has failed to establish that respondent No. 1 tenant was not ready and willing to pay the rent. The Appellate Court has found that the tenant was already ready and willing to pay the rent; but it is the landlord who was avoiding to receive the rent so that he can make arrears of rent as a ground for seeking a decree of eviction against the tenant. The Appellate Court, therefore confirmed the order of the trial Court refusing to pass decree of eviction against the tenant on the ground of default committed by the tenant in payment of rent. I, further find that so far as subletting is concerned, both the courts have concurrently held that the suit premises were not sublet by the respondent No. 1 to respondent 2. But the courts have held that the respondent No. 1 was taking help of the respondent No. 2 in doing some job work in the suit premises and therefore it cannot be said that the premises were sublet by the respondent No. 1 to respondent No. 2. Similarly, both the courts below have concurrently found that the dominant user of the suit premises was residence and merely because the respondent No. 1 was also doing some job working in those premises, it cannot be said that he has changed the user of the premises. As dominant user of the premises has continued to be residence, I find that there is evidence on the record to sustain the findings recorded by the courts below which are findings of facts and they are concurrent. I do not find any manifest or apparent error of law in those findings and therefore, in my opinion it is not a case where this Court can interfere in its jurisdiction under Article 227 of the Constitution of India.

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

4. Petition dismissed.