

(1999) 09 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 1468 of 1987

Narayan Dagadu Patil

APPELLANT

Vs

Sou. Hirabai Gajanan Mulik and Others

RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, Order 21 Rule 98

Citation : AIR 2000 Bom 68

Hon'ble Judges : Pratibha Upasani, J

Bench : Single Bench

Advocate : Anita A. Agarwal, for the Appellant; G.M. Khambete, for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Upasani, J.—This Writ Petition is filed by the petitioner/original Obstrucster against the Respondents (Respondent No. 1 being Original Plaintiff/ Decree Holder and Respondent Nos. 2 and 3 being Original Defendants and Judgment -- Debtors), being aggrieved by the Judgment and Order dated 28th January, 1987, passed by the 6th Addl. District Judge, Pune, in Misc. Civil Appeal No. 284 of 1986. By the impugned Judgment and Order, the learned 6th Addl. District Judge, Pune allowed the appeal of the Appellant/Original Plaintiff/ Respondent No. 1 herein, Hirabai Gajanan Mulik and directed that she be put in possession of the suit premises by removing the obstruction of the Opponent (petitioner herein) in the execution proceedings of the decree, passed by the Civil Court in Civil Suit No. 2726 of 1977, which was confirmed in Regular Appeal No. 50 of 1983.

2. Few facts, which are required to be stated, are as follows :

Respondent No. 1 in the present writ petition, namely, Hirabai Gajanan Mulik had filed Civil Suit No. 2726 of 1977 against Respondent No. 2-Prabhatkumar Nagendranath Misra and Respondent No. 3-Purshottam Narayan Dhadphale for

possession of the tenanted premises. The said suit was decreed on 27th July, 1982, Civil Appeal No. 50 of 1983 preferred against the said judgment was also dismissed on 24th April, 1984. Thereafter, Respondent No. I/ Decree Holder/ Hirabai filed Regular Darkhast No. 436 of 1984 for execution of the said decree before the learned 4th Additional Judge, Small Cause Court, Pune. She also filed application being Misc. Application No. 744 of 1984, under Order 21, Rule 97 of the Code of Civil Procedure, 1908, for removing the obstruction caused by the present petitioner-Narayan Dagadu Patil/ Original Opponent No. 3, who was causing the said obstruction for execution of the decree.

3. The learned 4th Additional Judge, Small Cause Court, Pune, after recording evidence and after hearing all the parties, came to the conclusion that the applicant/ Decree Holder Hirabai had failed to prove that Opponent No. 3/present petitioner/ Narayan Dagadu Patil/Obstructionist had no legal right, title and interest to cause obstruction in the execution of the decree. The learned Judge also held that the said Opponent No. 3, namely the present petitioner/ Obstructionist proved that he was the licensee of the suit premises since May 1972 of Opponent No. 1, namely Prabhatkumar Misra (Respondent No. 2 in the present petition) and as such, he became a deemed tenant of the suit premises. Observing this, he dismissed the application of the applicant/Decree-Holder/ Hirabai which was made by her for removal of obstruction.

4. Being aggrieved by the said order, Hirabai filed Misc. Civil Appeal No. 284 of 1986 in the Court of the 6th Addl. District Judge, Pune, who by a reasoned order, allowed the appeal and set aside the order of the 4th Additional Judge, Small Cause Court, Pune. He also allowed Application No. 744 of 1984 made by Hirabai for removal of obstruction and directed that she be put in possession of the suit premises by removing the obstruction. He granted three months' time to the present petitioner to vacate the premises from the date of the Judgment and Order.

5. Being aggrieved by the said Judgment and Order of the 6th Addl. District Judge, Pune, whereby Hirabai's appeal was allowed, the present writ petition has been filed by the petitioner/original Obstructer/Narayan Dagadu Patil.

6. It is contended, inter alia, by the petitioner/Original Obstructionist that the learned 6th Addl. District Judge erred in holding that he was not a licensee on 1st February, 1973 of the original tenant i.e. Respondent No. 2 herein Prabhatkumar Misra and was, therefore, not a deemed tenant u/s 15A of the Bombay Rent Act. It is also contended by the petitioner that the learned 6th Addl. District Judge erred in not relying on the leave and licensee Agreement dated 8th May, 1972 and other documents produced by the petitioner. According to the petitioner, the facts and evidence in the case were not properly appreciated by him and that the impugned Judgment was against law, equity and good conscience and therefore, it be set aside and the order of the 4th Additional Judge, Small Cause Court, Pune, dated 25th April, 1986 be restored.

7. I have heard Mrs. Anita A. Agarwal appearing "for the petitioner/Original Obstructionist, so also Mr. Khambete appearing for Respondent No. 1. I have also perused the proceedings, including both the judgments of the lower Courts and in my opinion, the Judgment and Order passed by the 6th Addl. District Judge, Pune, whereby he allowed the appeal of Hirabai/Decree Holder and ordered that she be put in possession of the suit premises, is the correct order. The learned Judge has, at length, discussed the entire evidence on record. He has given a finding that the Leave and Licence Agreement, which was allegedly of 8th May, 1972, was a got up document. This finding is arrived at by him after due application of mind. He has discussed this Leave and Licence Agreement as well the receipt of donation allegedly produced by the obstructionist. He has also examined other documents tendered by him, like Ration Card, Teachers' Voting List 1983 and had opined that all those documents were pertaining to the period after 1980 and not prior to 1980 or pertaining to the period 1973 since when obstructionist came to be in possession. Even for discarding these two documents, namely. Leave and Licence Agreement of 1972 and Donation Receipt produced by the obstructionist, the learned Judge has taken pains to give reasons as to why in his opinion, the leave and licence Agreement was not acceptable, how according to him, it was a got up document and how there was over writing at the place where date was mentioned on the Donation Receipt. This reasoning appears on internal page No. 7 of the Impugned Judgment. I do not find any perversity or any infirmity or any arbitrariness in the reasoning given by the learned Judge.

8. The learned Judge also was right in observing that no licence fee receipt was produced by the petitioner/obstructionists. Even this observation about non-production of licence fee receipt is very significant and relevant on the background that the claim of the petitioner is that he was licensee of Respondent No. 2 Prabhatkumar Misra from the year 1972 and, therefore, he was entitled to the benefit of Section 15A of the Bombay Rent Act. There was production of two documents by the petitioner/obstructionist, namely, Leave and Licence Agreement and Donation Receipt, which were found to be bogus by the lower Court and production of other documents, which were not pertaining to the relevant period, to support the contention of the petitioner that he was licensee from the period of 1972, coupled with the fact that the petitioner could not produce any licence fee receipt, led the learned Judge to hold against him and in favour of the Decree-Holder/Hirabai. In my opinion, there was nothing wrong in the reasoning of the learned 6th Addl. District Judge, Hirabai/Original Plaintiff has succeeded all throughout and when she was about to reap the fruits of the decree, after a long period of 22 years, the petitioner/obstructionist tried to prevent her from enjoying the fruits of her decree.

9. Mrs. Agarwal tried to argue in vain that the learned 6th Addl. District Judge, Pune has given a finding in the impugned Judgment and Order that regular appeal lies against the order passed under Order 21, Rule 97 of the Code of Civil Procedure, but that he has not given any reasons as to how the regular appeal is

maintainable. In my opinion, this submission of Mrs. Agarwal is misconceived for following reasons :

First of all, it is to be kept in mind that Misc. Application for removing obstruction caused by the petitioner, was made by the Decree-Holder under Order 21, Rule 97 of the Code of Civil Procedure, 1908. Rule 97 of Order 21 of the CPC states as follows :

"Resistance or obstruction to possession of immovable property.-- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under Sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

10. Rule 101 of Order 21 of the CPC states that:

"All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

11. Thereafter Rule 103 of Order 21 of the CPC states that:

"Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree."

12. Rule 104 of Order 21 of the CPC further states that :

"Every order made under Rule 101 or Rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under Rule 101 or Rule 103 is made has sought to establish a right which he claims to the present possession of the property."

13. In the present case at hand, the appeal filed by the Decree Holder against the order passed by the Small Cause Court was wrongly described by her as Misc. Civil Appeal and the learned 6th Addl, District Judge gave a finding that, against order made under Order 21, Rule 98 of the CPC regular appeal lies. In the last portion of his judgment, just before the operative part of the judgment, he has observed that, "There is no injustice to the parties though some irregularity is made about registration of this appeal". He was perfectly right in saying so. He has disposed of the appeal on merits and there was no injustice or

any prejudice whatsoever caused to the petitioner/obstructionist. There is no injustice if Regular Appeal is incorrectly described as Misc. Civil Appeal when appeal is disposed of on merits by the learned Judge and when all orders passed under Order 21, Rule 98 of the CPC are to be treated as decrees as per Order 21, Rule 103 of the Code. Mrs. Agarwal argued that in view of this, the matter should be remanded back to the lower Court to enable the learned Judge to give a finding on this. Since the appeal is disposed of on merits, there is no question of remand. I, therefore, reject the contentions of Mrs. Agarwal on this count also and pass following order :

Writ Petition is dismissed. Rule discharged. Interim order dated 26th March, 1987 is hereby vacated.

Mrs. Agarwal prays that this order be stayed for a period of 8 weeks. I have also heard Mr. Khambete. Prayer of Mrs. Agarwal granted, subject to usual undertaking.

14. Certified copy expedited.