

(1998) 02 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No's. 2899, 2900 and 2901 of 1986

Raghuvirsingh Ramchandra Singh Thakur (Deceased) by LR.	APPELLANT
Vs	
Laxmanbhai D. Kurlawalla (Deceased) by Lrs. and Another	RESPONDENT

Date of Decision : 02-02-1998

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11
Constitution of India, 1950 — Article 226

Citation : (1998) 4 ALLMR 489 : (1998) 100 BOMLR 641

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Deshmukh, J.—By these 3 petitions, petitioners challenges common Order passed by the Division Bench of the Small Causes Court of Bombay in Appeals No. 683/83, 685/83 and 686/83 and therefore, these petitions can be conveniently disposed of by a common Judgment.

2. Appeals No. 683/83, 685/83 and 686/83 were filed by the petitioners herein challenging the Judgment and decree passed by the Single Judge of the Small Causes Court, Gr. Bombay dated 31/8/83 in RAE Suits No. 3310/70, 3311/70 and 3314/70. Those Suits were filed by the original Respondent No. 1- Laxmanbhai Kurlawalla and Respondent No. 2 - Mavjibhai Kurlawalla, claiming that they are owners of the suit premises which are occupied by the petitioners as their tenants.

3. The landlord sought decree of eviction against the tenants mainly on the ground that they are not ready and willing to pay the rent. The Trial Court however, found in favour of the Landlord and decreed the Suit in his favour and directed tenants to vacate the suit premises. In the Appeal filed by the tenants the Appellate Court confirmed the findings recorded by the Trial Court and dismissed the Appeal and therefore in these petitions concurrent findings recorded by both the Courts below is challenged.

4. It is common ground before me that a Notice dated 20/2/70 was issued by the landlord demanding arrears of rent from 1/7/69 to 31/7/70. It is also an admitted position that within 1 month of the Notice there is no payment made of the arrears of rent nor any application filed u/s 11(3) of the Bombay Rent Act within 1 month. The only dispute is whether the Demand Notices were duly served on the tenants or not. Both the Courts have found that the service of Notice was effected by the landlord on the tenants. The learned Counsel appearing for the tenants/petitioners submitted that Demand Notice was not sent by registered post A. D. According to the landlord the Notices were sent under Certificate of Posting but the tenants by entering into witness box have denied receipt of any Notice. Therefore, only question that is to be examined is whether Notice was personally served as alleged by the Landlord on the tenants or not. The learned Counsel for the tenants/ petitioners submitted that the tenants have denied receipt of the Notice. He further submitted that the Landlord was relying on the signature on his copy of the Notice. However, Landlord has not led any evidence to prove that the signature on the Notice were of the tenants. In the submission of the learned Counsel for the petitioners therefore, there is no valid service of Notice.

5. Perusal of the Orders impugned in the petitions shows that both the Courts relied on the letter dated 6/3/70 addressed to the Advocate of the Landlord by the Advocate of the tenants and both the Courts held that the contents of this letter dated 6/3/70 conclusively established that the demand Notice was received by the tenants. I have perused the letter dated 6/3/70. From first paragraph of the letter it is clear that the tenants were aware of the Notice sent by the landlord to the tenants. Perusal of the paragraph No. 2 shows that the tenants were also aware of the contents of those Notice. In my opinion, therefore conclusion drawn concurrently by the 2 Courts below on the basis of the contents of the letter dated 6/3/70 that demand Notices were personally served on the tenants is a possible conclusion and therefore, in my opinion, this Court cannot interfere with that conclusion in exercise of its jurisdiction under Article 226 of the Constitution of India.

6. In the result, therefore, petitions fail and are dismissed. Rule discharged with no order as to cost.