

(2011) 02 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 477 of 2010

Shine Enterprises

APPELLANT

Vs

Shri Dattaram Narayan Marathe and Darshana Dattaram
Marathe

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 56

Citation : (2011) 2 BomCR 505

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : A. Kansar, for the Appellant; None, for the Respondent

Judgement

A.P. Lavande, J.—Heard Mr. Kansar, learned Counsel for the 2 Petitioner. None appears on behalf of the Respondents though served.

2. By order dated 10/12/2010, the Respondents were put to notice that the petition may be disposed of at the admission stage. Hence Rule. Heard forthwith.

3. By this petition, under Article 227 of the Constitution of India, the Petitioner who is the Plaintiff in Regular Civil Suit No. 19/2005/B pending before the Civil Judge, Senior Division, Bicholim challenges order dated 6/1/2008 by which the learned Trial Judge has referred issue No. 7 to the Rent Controller and also order dated 23/6/2009 passed by the Trial Court by which review application filed by the Plaintiff has been dismissed.

4. The Petitioner filed the suit against the Respondent/Defendants for their eviction from the suit house and for mesne profits. The Defendants took the plea that they are the tenants of the suit house. The Trial Court framed seven issues. Issue No. 7 reads as under:

7. Whether the Defendants prove that they are tenants of the suit premises?

5. The Trial Court by order dated 6/12/2008 referred the issue to the Rent Controller placing reliance upon Section 56 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 on the ground that it is only the Rent Controller who has jurisdiction and the Civil Court has no jurisdiction to deal with the issue of tenancy in respect of tenanted premises.

6. Having heard Mr. Kansar, learned Counsel for the Petitioner, in my considered opinion the Trial Court has committed a patent illegality in holding that the issue of tenancy in respect of a building has to be exclusively decided by the Rent Controller. There is no provision in the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 ("The Act" for short) which gives exclusive jurisdiction to the Rent Controller to decide the issue of tenancy in the event such an issue arises before the Civil Court. No doubt, in proceedings before the Rent Controller if an issue of tenancy arises the Rent Controller has jurisdiction to decide such an issue. But this cannot be construed as conferring exclusive jurisdiction on the Rent Controller to decide the issue of tenancy. It is well settled that the Civil Court has jurisdiction to decide all issues arising before it unless the jurisdiction of the Civil Court is ousted by any statute.

7. The Act does not have any provision which ousts the jurisdiction of the Civil Court to decide the issue of tenancy in respect of a building or a house. Therefore, in my considered opinion the learned Trial Court has clearly erred in law in referring the issue of tenancy to the Rent Controller.

8. In view of the above, the order dated 6/12/2008 referring the issue of tenancy to the Rent Controller and order dated 23/6/2008 passed by the learned Civil Judge, Senior Division, Bicholim in Regular Civil Suit No. 19/2005/B are quashed and set aside. The Trial Court is directed to decide all the issues including the issue of tenancy and dispose of the suit in accordance with law.