

(2003) 08 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No. 1716 of 1990

Shri Janardan Nago Patil

APPELLANT

Vs

Shri Ramanand Ramdas Mishra

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A

Citation : (2004) 3 BomCR 389 : (2003) 4 MhLj 853

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : R.S. Apte, for the Appellant; Umesh Mankapure, for the Respondent

Judgement

D.G. Karnik, J.—Heard learned counsel for the parties. Petitioner is the owner of the suit property. Defendant is a tenant therein on a monthly rent of Rs. 75/-. The petitioner filed a suit for eviction against the respondent under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, Bombay Rent Act). The trial court framed as many as 12 issues. The trial court held all the issues against the petitioner and held that the petitioner was not entitled to possession. In view thereof, the trial court dismissed the suit. Being aggrieved, the respondent filed an appeal in the District Court, Thane. By a judgment and order dated 9th January, 1990 the learned 8th Additional District Judge, Thane dismissed the appeal of the petitioner which is challenged in this petition.

2. Learned counsel for the petitioner submitted that the first appellate court did not apply its mind to the facts in controversy at all. The learned Judge did not even frame the necessary point for determination regarding the grounds on which possession was claimed by the respondent. The learned appellate court framed only two points for consideration which are extracted below:

1. Whether the trial Judge rightly has decreed the suit?
2. What order?

3. In the case of Anita Baretto v. Abdul Wahid Santosh reported in 1984 MH.L.J 931 this court has curtsied the practice followed by the district court in not framing all the necessary points for determination. The court noted that several times it is found that the appellate courts do not frame points for determination in the following manner:

(1) Is the judgment of the court below liable to be set aside?

(2) Is the decree of the court below liable to be interfere with?

(3) Is the decree of the court below valid?

(4) Is the decree of the court below proper and legal?

4. This Court held that the framing of the points in the manner mentioned above was not in conformity with Order 41 Rule 3(A) of the Code of Civil Procedure. The first appellate court in the present case did not frame proper points for determination but, only framed a single point as to whether the trial court had rightly dismissed the suit. Perusal of the judgment makes it clear that the first appellate court had not applied its mind to the points urged before it and has not recorded its decision on facts urged before it. The first appellate court is a final court of facts. it was therefore, necessary for it to frame proper points for determination and record its findings thereon. In the circumstances, remand is inevitable. Accordingly, the impugned judgment and order is set aside and the matter is remanded to the first appellate court. The first appellate court is directed to frame proper points for determination and record its findings on each of the points urged before it. Rule is made absolute to this extent.

5. In view of the fact that the appeal is the year 1988, the first appellate court is directed to dispose of the appeal as expeditiously as possible and in any event within six months hereof.