

(2010) 07 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 4805 of 1997

Sudha Madhusudan Lanjekar since deceased Ashok
Madhusudan Lanjekar and Others

APPELLANT

Vs

Shashikant Gajanan Pathare since deceased Anjali
Shashikant Pathare and Others

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Limitation Act, 1963 — Article 66

Citation : (2012) 2 MhLj 153

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

Bench : Single Bench

Advocate : Virendra Tulzapurkar and Nikhil Sakhardande, instructed by Vasant B. Dhawan, for the Appellant; Priyadarshini A. Birje, for the Respondent

Judgement

D.G. Karnik, J.—In view of the final order that is proposed to be passed, it is not necessary to narrate elaborately the facts. The facts necessary for the ultimate order that is proposed to be passed are stated below.

2. Petitioner as a landlord had given to the respondent the suit premises for the purpose of carrying out grocery business under a document styled as "leave and license" dated 1 May 1970. The agreement was renewed from time to time and was last renewed on 1 February 1973. In the year 1985, the petitioner filed a suit against the respondent inter alia on the ground that in breach of the condition of license/letting the respondent was using the suit premises both for the purpose of running a grocery shop as well as for residence and that amounted to change of user.

3. A decree for possession was passed on the ground of change of user and also other grounds. In the respondent's appeal, the decree for possession passed on the other grounds was reversed. As regards the ground of change of user, the appellate court held that petitioner had proved the change of user but declined to pass a decree on the ground that the suit was barred by limitation inasmuch as

the suit (filed in the year 1985) was after lapse of 12 years of the change of user.

4. Before me, Mr. Tulzapurkar, learned Sr. Counsel appearing for the petitioner submitted that the suit would be governed by Article 67 of the Limitation Act which provides determination of the tenancy as the starting point of limitation. Since the suit was filed within 12 years of the notice to quit it was within limitation. Mr. Tulzapurkar relied upon a decision of this Court in *Pandurang Maruti Patil v. Ganesh Hari Dharmadhikari* 1997 (2) Bom.L.R. 705, wherein a learned single Judge of this Court has taken a view that a suit for possession filed by a landlord on the ground of breach of provisions of Bombay Rent Act, 1947 would still be governed by Article 67 of the Limitation Act. In other words, suit can be filed within 12 years, not of the forfeiture of tenancy, but from the determination of tenancy.

5. Per contra, Ms. Birje, learned Counsel for the respondent submitted that in view of the decision of the Supreme Court in the case of *V. Dhanpal Chettiar Vs. Yesodai Ammal*, it is not at all necessary to terminate the tenancy before filing of a suit for possession and therefore, Article 67 of Limitation Act would not be applicable in respect of a suit for possession by the landlord against a tenant where the tenant is protected by any Rent Restriction Act in force. In places where any Rent Restriction Act is applicable, the suit for possession would be governed by Article 66 of the Limitation Act inasmuch as forfeiture of tenancy, by breach of a statutory provision, would be the cause for filing of the suit. In case of any breach of any provision contained in the Bombay Rent Act, 1947 (except non payment of rent) the suit can be filed without any notice. Notice of termination of tenancy is superfluous and where the suit is filed without a notice obviously Article 67 of the Limitation Act cannot apply because there is no termination of tenancy at all. There cannot be two different starting points for counting the period of limitation - one where notice of termination is issued, from the date of the notice and the other, where no notice of termination is issued, from the date of forfeiture i.e. breach of a statutory provision. This besides plainly being discriminatory would give a tool in the hands of a landlord whose suit has become time barred under Article 66 of the Limitation Act to bring it within limitation simply by issuing a notice to quit and claim fresh period of limitation from the date of termination. In support of her contention, Ms. Birje relied upon a decision in *Shashikant Yeshwant Limaye and Anr. v. Chintaman Vinayak Kolhatkar* Writ Petition No. 121/95 decided on 2 July 2010, Coram D.G. Karnik, J. Unaware of the earlier decision in *Pandurang Patil's* case in *Shashikant Limaye's* case, I have taken a view that in the light of the decision of the Supreme Court in *V. Dhanpal Chettiar* (supra) such a suit would be governed by Article 66 of the Limitation Act. There is thus apparent conflict in the view taken by two Benches of this Court.

6. In *Kondeo Savalaram Panse Vs. Digambar Ramrao Pai and Others*, Khanwilkar, J. has also observed that a suit by a landlord against a tenant for recovery of possession would be governed by Article 66 of the Limitation Act. Of

course, he has further held that period would be counted from the date of knowledge of the forfeiture. The fact however remains that there appears to be a difference of opinion amongst the Benches of this Court on whether a suit by a landlord against a tenant protected under the Bombay Rent Act would be governed by Article 66 or Article 67 of the Limitation Act. In view of this difference of opinion, it would be appropriate to refer the matter to a larger Bench. Accordingly, papers may be placed before the Hon"ble Chief Justice for appropriate orders.