

(2008) 09 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 4289 of 2008

Sumitra Madhav State and Others

APPELLANT

Vs

Nirmala Gangadhar Dande (Smt.) and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 15(1), 34

Citation : (2009) 2 BomCR 390

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : N.S. Deshpande, for the Appellant; V.V. Bhangde, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari B.P., J.—Heard Advocate Shri N.S. Deshpande, for the petitioners/ original defendants and Advocate Shri V.V. Bhangde for respondents. Rule made returnable forthwith and heard finally by consent. The suit for eviction & possession was dismissed by the Small Causes Court, and R.C.A. 437/2007 filed by the respondents (landlords) u/s 34 of the Maharashtra Rent Control Act, 1999 has been allowed by the District Judge No. 9, Nagpur on 27.6.2008

2. Advocate Deshpande contends that petitioner No. 3 who has been accepted to be nephew of original tenant Madhaorao Shete and whose joint residence with said Madhao has been accepted on record, ought to have been treated as direct tenant and there was no question of examining his status as subtenant. He contends that in fact agreement was negotiated by petitioner No. 3 and there are on record some documents of N.M.C. which shows such independent status of petitioner No. 3. He argues that as petitioner No. 3 is original tenant, he still occupies the tenanted premises in his own rights and there is no question of granting permission by lower Appellate Court on the ground of nonuser of tenanted premises by original tenant or Madhav. He further states that in these circumstances there is no question of granting permission even on the ground of default in payment of rent after receipt of notice u/s 15(1) of the Maharashtra

Rent Control Act.

3. Advocate Bhangde in reply states that the lower Appellate Court has independently considered the evidence and no document has been produced on record to show that petitioner No. 3 was residing with petitioner No. 1 and 2 as member of their family. He further argues that because of this he has been rightly labeled as sub-tenant by present respondents, but even lower Appellate Court has not granted permission on that ground. He states that in any case petitioner No. 3 has not come up with plea that he attempted to pay rent to present respondents and that rent was not accepted. He argues that after service of notice u/s 15(1) or even after service of suit summonses on the petitioner No. 3 or petitioner No. 1 and 2 could have deposited the rent. According to him that rent was not deposited as petitioner No. 1 and 2 had already shifted permanently to Bombay and therefore he states that grant of permission on the ground of default is proper. He further argues that in this situation when original tenants are not in occupation and they are not paying rent also and a stranger continues to be in occupation a case of nonuser is definitely made out.

4. It is apparent that original tenants as per contention of landlord namely petitioner No. 1 and 2 have shifted to Bombay and rent was paid to the respondents after 17.11.2003. Notice u/s 15(1) was properly served within statutory period arrears were not cleared. Arrears were also not cleared immediately after receipt of suit summonses, but have been paid on 30.10.2005. If petitioner No. 3 was really genuine or legal tenant, he could have immediately deposited arrears of rent by placing his stand on record and without prejudice to his contentions. It is apparent that as original tenant vacated, nobody was interested in paying rent. Lower Appellate Court is therefore, justified in holding that there was default and in decreeing the suit on that count.

5. The corporation documents on which petitioner No. 3 is placing reliance to show that he was legal occupant of the premises, does not in any way further his case to establish that he was a tenant independently along with his uncle or in any case a member of his family. No documents to show that he was member of his uncle's family are placed on record. Documents i.e. bills or some notices or even receipts by corporation issued in favour of petitioner No. 3 cannot change his status in any way to the prejudice of respondents.

6. Lower Appellate Court therefore, has rightly found that legal tenant had vacated the premises and was not utilizing it and therefore that constituted nonuser.

7. I do not find any perversity or jurisdictional error in application of mind by the lower Appellate Court. Writ petition is therefore, without any merit, the same is dismissed with no order as to cost.

8. At this stage, Mr. Deshpande states that the petitioner No. 3 should be given time of two months to vacate the suit premises. Advocate Bhangde states that respondents have no objection, if appropriate undertaking is filed in that line.

Petitioners to file undertaking that vacant possession of the suit premises shall be handed over to respondents by 31.12.2008. Such undertaking be filed on or before 20.10.2008. If the undertaking is not filed, respondents shall be free to execute the decree as awarded by the lower Appellate Court in their favour. If the undertaking is filed, respondents shall not execute the decree till 31.12.2008.

9. Undertaking should also specifically "indicate that till 31.12.2008, petitioner shall not create any third party interest in the tenanted premises.