

(1996) 06 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 1721 of 1983

Tarachand Gulabchand Zaver

APPELLANT

Vs

Vaibhav Guest House

RESPONDENT

Date of Decision : 13-06-1996

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 39
Constitution of India, 1950 — Article 227

Citation : (1997) 99 BOMLR 115

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

Bench : Single Bench

Judgement

G.D. Kamat, J.—This petition challenges the order dated 4th March 1983 made by the Additional Chief Judge, Small Causes Court, Bombay in Appeal No. 510 of 1980 under Article 227 of the Constitution of India.

2. For the view that I am taking and propose to pass final order in this matter, not many facts are necessary to be stated, nor advert to legal position, The (actual matrix is this that the building known as "Saileela" situate at Jogeshwari (East), Bombay is owned by one Ramchandra Nimbalkar. He also claims to be a partner of M/s. Waibhav Guest House which is respondent in this petition. A part of Saileela building is let out by Shri Nimbalkar to M/s. Waibhav Guest House which runs the Guest House there. On 14th July 1979, Room No. 17 of M/s. Waibhav Guest House was given to the petitioner on payment of Rs. 450/- per month. For failure of the petitioner to pay the monthly rates and falling in arrears thereto and also for committing some other nuisance, it appears that on behalf of M/s. Waibhav Guest House, an application was moved before the Controller purported to be an application u/s 39 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short "the Rent Act"). Some sort of Jurisdictional point was raised by the petitioner that Room No. 17 was never part of M/s, Waibhav Guest House and that he is tenant of Shri Nimbalkar in respect of Room No. 17. It appears that the petitioner in support also examined some officials of the Bombay Municipal Corporation. Based upon the evidence, the

Controller found that on the date of the application instituted by M/s. Waibhav Guest House, the same did not have a renewed licence from Corporation as the licence had expired on 31st December 1979. The Controller therefore, held that he has no jurisdiction to entertain the application of the respondent - M/s. Waibhav Guest House and by his order dated 12th September 1980 rejected the same.

3. Being aggrieved by the order made by the Controller, the respondent instituted an appeal before the Small Causes Court at Bombay. The Additional Chief Judge, Small Causes Court, Bombay, found favour with the appeal instituted by the respondent and by the impugned judgment dated 4th March 1983 quashed and set aside the order of the Controller dated 12th September 1980 and remanded the proceedings initiated u/s 39 of the Rent Act bearing No. CHL/EC 2 of 1980 with the direction to the Controller for disposal according to law in the light of the observations made. For that matter, a direction was also given for the parties to appear before the Controller on 4th April 1983.

4. This appellate order is challenged in the present petition. The petition was instituted in April 1983 and rule and interim stay was granted, with the result the appellate order remanding the proceedings never saw the light of the day before the Controller. This petition itself is pending before this Court since April 1983. I have heard Shri Prem S. Gidwani, learned Counsel appearing for the petitioner and Shri Belosey, learned Counsel appearing for the respondent. The petitioner insists that he is tenant in respect of Room No. 17, the tenancy having been settled on him by Shri Ramchandra Nimbalkar sometime in July 1979. Respondent's claim before the Controller is that the petitioner is a lodger of Room No. 17 and sought a certificate for his eviction u/s 39 of the Rent Act for his failure to pay the monthly rate as also for commission of nuisance, etc, The petitioner had insisted upon a decision on a point of jurisdiction from the Controller on the basis that he is a tenant and not a lodger. Though the decision was in his favour, it was altogether for different reason, namely, that there was no renewal of a licence of a Lodging House. Admittedly, the petitioner had signed a form as a lodger when he entered the premises in July 1979. The appellate Court in the impugned judgment rightly held that the matter requires consideration and the contradictory stands taken by the parties need to be adjudicated after hearing the parties. The appellate Court, therefore, remanded the matter to the Controller by the impugned order. In my view, the order of remand cannot be faulted and there is no infirmity whatsoever. On the contrary, I find that the approach by the Additional Chief Judge, Small Causes Court, Bombay in the appeal was correct and the matter between the parties requires to be adjudicated one way or the other. No interference is called for.

5. Before I part with this order, it may be mentioned that claim for arrears of monthly rate was made sometime in July 1980 when the respondent had filed application u/s 39 of the Rent Act before the Controller. It appears that no payment was effected by the petitioner. In Civil Application taken by the

respondent before this Court in these proceedings, it is common ground that on two occasions, the petitioner has deposited sum of Rs. 25,000/-, with the result the total sum deposited by the petitioner is Rs 50,000/-. Some amount had also been directed to be deposited which the petitioner did at the time of admission of this petition. I am told that on rough and ready calculation, the sum of nearly Rs. 32,000/- would be due and payable as on today by the petitioner to the respondent. In my view, therefore, a direction is justified to the petitioner to deposit a further sum of Rs. 25,000/- within 12 weeks from today before the Controller and the respondent is permitted to withdraw the same after furnishing security to the satisfaction of the Controller. I make it clear that deposit and withdrawal of the amount shall be without prejudice to the rights and contentions of both the parties.

6. The petition is disposed of by order as follows:

The petition is dismissed and the rule is discharged. Interim order stands vacated. The Controller is directed to dispose of the application bearing No. CHL/EC 1980 of the respondent M/s. Waibhav Guest House by 31st December 1996
Certified copy expedited.