

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO. 270 OF 2005

Sukha Damri

....Petitioner

V/S

Bradbury Mills Ltd. & Anr.

....Respondents

Mr B. K. Raje for Petitioner

Ms. Tahira Siddhique a/w. Ms Shaheen Sathe for Money Magnum Nest
Private Limited

CORAM : M. M. SATHAYE, J.

DATED : 14th NOVEMBER 2025

P.C.:

1. This petition is filed challenging the judgment and decree dated 24/12/2004 passed by the Appellate Bench of Small Causes Court at Bombay in Appeal No. 58 of 1983, confirming the judgment and decree dated 09/11/1982, passed by Small Causes Court at Mumbai in R.A.E Suit No. 5791 of 1972. The Trial Court had passed eviction decree directing the Petitioner to vacate the suit premises. The Petitioner's appeal has been dismissed. The Petitioner is Defendant/Tenant and Respondent No. 1 company is Plaintiff/Landlord.

2. When the petition was filed, the Respondent No. 1 was in liquidation and therefore the Respondent No. 2 was official liquidator. The Respondent No. 1 filed the said suit for recovery of possession of suit premises from Petitioner under provisions of section 13(1)(f) of the Bombay Rents, Hotels and Lodging House Rent Control Act as it existed prior to 1987 amendment.

3. Suit was filed contending as under. That the Petitioner was employed as 'sepoy' by the Respondent No. 1 in the year 1955. From July 1958, Respondent No. 1 let out to Petitioner, suit premises being Room No. 3, block No. 6, Rangwala building, opposite Braudbury Mills, Maulana Azad Road, Mumbai at monthly rent of Rs.12/- being in employment of the Respondent. Thus it was a 'service tenancy'. That since Petitioner ceased to be in employment by notice dated 07/09/1972, the tenancy was terminated and Petitioner was called upon to vacate the suit premises. Therefore, suit was filed, seeking eviction.

4. The Petitioner filed written statement. He admitted that he was employed as 'sepoy' with Respondent No.1. He admitted that Respondent No. 1 is owner and landlord of the suit premises. He admitted that he was transferred to Phoenix Mill Limited in 1962. He, however, denied that his service was validly terminated. He further denied that he is tenant due to employment. He denied service tenancy. He contended that rent was deducted from his salary and no rent receipts were issued. That he was protected tenant or sub-tenant or protected license.

5. The Respondent No. 1 examined its Assistant Secretary. The Petitioner examined himself. The Trial Court on appreciation of evidence, decreed the suit, directing the Petitioner to vacate the suit premises. Petitioner's undertaking was recorded not to part with possession or induct third person.

6. The Petitioner filed a said Appeal, challenging the decree of eviction. The Appeal Court on re-appreciation of evidence dismissed the Appeal thereby confirming decree of eviction. In these circumstances, Petitioner filed the petition in which decree of eviction was stayed, by order dated 28/01/2005. On 26/07/2005, the petition was admitted and interim stay

was continued.

7. On 03/10/2025, learned advocate for the Respondent No.2 - Official Liquidator pointed out that suit premises has been sold to M/s Everest Fincap Pvt. Ltd. in the Debt Recovery Tribunal proceedings and current name of the entity is Money Magnum Nest Private Limited. The Petitioner was given liberty to send notice of the Petition to the said entity. Learned Advocate for Money Magnum Nest Pvt. Ltd. appeared today, however expressed disability to assist the Court as it is not party and no copy is served upon it.

8. Learned counsel Mr. Raje for the Petitioner submitted that his efforts to contact the Petitioner has failed, as the communication sent by Registered Post has returned with postal remark indicating change of address.

9. The Petitioner was 80 years old in the year 2005 when the petition was filed. 20 years have since passed. His advocate has not been able to contact Petitioner. Since the petition is pending for long time, Mr. Raje made submissions on the basis of available record.

10. He submitted that the money order sent by the Petitioner towards rent are not properly considered. He submitted that electricity bill of the suit premises stood in the name of Petitioner, which indicates independent tenancy and not service tenancy. He submitted that deduction of rent from the salary was not properly considered. He further submitted that Respondent No. 1 and Phoenix Mills Limited are two independent companies and termination of service by Phoenix Mills Limited, has no consequence

11. I have considered the submissions and perused the records.

12. The Petitioner is challenging the concurrent findings of fact wherein it is held that the Petitioner was monthly tenant by reason of his employment and the Petitioner could not prove that he is either lawful sub-tenant or protected licensee. Both, the Trial Court and the Appeal-Court have held that the Respondent No. 1 is entitled to decree of eviction. The Appeal Court has considered that Petitioner admitted in his cross-examination that when he was in the employment of Respondent No. 1- Company, rent was deducted from his salary, and thereafter, when he was transferred to Phoenix Mills Ltd. he started sending rent by money order. It is held by the Appeal-Court that Petitioner has not at all stated in his examination-in-chief, as to how and when suit premises were let out to him. Though a case of lawful sub-tenant or protected licensee is pleaded, Petitioner has failed to prove it. The Appeal-Court has concluded that irresistible inference on the basis of evidence has to be drawn that the Petitioner got suit premises as 'service tenancy' by virtue of employment. It has come on record that, Petitioner ceased to be in service with effect from 04/03/1970, because he was dismissed. No evidence or document was produced to show that the order of dismissal was set aside.

13. Since it was established that, the Petitioner got suit premises under service tenancy and since it was further established that, he ceased to be in employment, it is held that decree under section 13(1)(f) of the Bombay Rent Act is legal and proper. The Appeal-Court has recorded a positive finding that the Trial Court has considered the pleadings and evidence in proper perspective.

14. So far as argument of money order is concerned, since the tenancy has been found to be service tenancy by both the Courts below, sending of

money order will not help the Petitioner. So far as the case of electricity bill is concerned the Trial Court has held that, when the Petitioner was inducted in premises by reason of his service, the said aspect cannot be said to be objectionable and it is possible that such situation exists.

15. There is nothing on record to indicate that the Petitioner was inducted under any independent capacity except for the reason of employment. Both the Trial Court and Appeal-Court have concurrently held the Respondent No. 1 is entitled to decree of eviction.

16. In the aforesaid facts and circumstances, I do not find any perversity or error apparent on the face of record. There is no error of jurisdiction. The concurrent view taken by the Courts below is on appreciation of evidence and it is most probable view. There is no reason to interfere under limited writ jurisdiction.

17. The writ petition is accordingly dismissed. No order as to costs.

(M. M. SATHAYE, J.)