

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1856 OF 1997**

Shri Prabhakar V. Lotlikar ] Petitioner

Vs.

Marol Medical Provision & General ]  
Stores & Ors. ] Respondents

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Mr. Rajesh Parab, for the petitioner.  
None for respondents.

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**CORAM : R.G. KETKAR, J.**

**DATE : 22<sup>nd</sup> MAY, 2017.**

**P.C.**

Heard Mr. Rajesh Parab, learned Counsel for the petitioner at length.

2. By this petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff' has challenged the judgment and decree dated 20<sup>th</sup> June, 1996 passed by the Appellate Bench of Small Causes Court, Mumbai in Appeal

No. 158 of 1994. By that order, the Appellate Bench allowed the appeal preferred by the respondents, hereinafter referred to as 'defendants' and set aside the judgment and decree dated 18<sup>th</sup> April, 1994 passed by the learned Judge presiding over Court Room No. 33 of Small Causes Court Mumbai at Bandra in R.A.E. Suit No. 754/4348 of 1971 and dismissed the suit instituted by the plaintiff. The relevant and material facts giving rise to filing of the present petition, briefly stated, are as under.

3. Plaintiff has instituted suit against the defendants for recovery of possession of Room No.3 in building known as 'Rockland', Marol Maroshi Road, Andheri (E), Mumbai 400 059 [for short 'suit premises'], inter alia, contending that defendant No.1, Marol Medical Provisions and General Stores was monthly contractual tenant of the plaintiff prior to termination of tenancy. By letter dated 11<sup>th</sup> January, 1971, plaintiff terminated tenancy of the first defendant. Notice was duly received by the first defendant on 16<sup>th</sup> January, 1971. Defendant No.1 has unlawfully sublet and/or assigned or transferred their interest in respect of the suit premises in favour of second defendant. Thus, the plaintiff has sought possession of the suit premises under

Section 13 (1) (e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 [for short 'Act']. Plaintiff further alleged that the defendants are in arrears of rent from 1<sup>st</sup> January, 1971 to 31<sup>st</sup> August, 1971 and that without consent of the plaintiff in writing have erected permanent structure in the suit premises. The plaintiff has claimed possession under Section 13 (1) (b) of the Act.

4. Defendants No.1 and 2 filed written statement, inter alia, denying material averments made by the plaintiff. It was contended that by a Deed of Assignment dated 2<sup>nd</sup> January, 1971, first defendant have assigned running and going concern being a Medical Store for valuable consideration to the second defendant. Defendant No.2 has claimed to be lawful assignee of the suit premises. Deed of Assignment was duly registered in the Office of Sub Registrar, Bandra.

5. Defendant No.3 who was impleaded subsequently also filed written statement substantially reiterating contentions advanced by defendants No.1 and 2.

6. On the basis of the pleadings of the parties, learned trial Judge framed necessary issues. The parties led oral as well as documentary evidence. After considering the evidence on record, the learned trial Judge decreed the suit on 18<sup>th</sup> April, 1994. The learned trial Judge held that the plaintiff proved that defendant No.1 had unlawfully sublet or assigned or transferred its interest in respect of the suit premises to defendant No.2. Learned trial Judge held that defendant No.2 failed to prove that he is lawful assignee of the suit premises. As far as ground of arrears of rent, as also construction of permanent structure in the suit room namely grounds falling under Sections 12 & 13 (b) of the Act, learned trial Judge declined to pass decree on these two grounds. In other words, the learned trial Judge decreed the suit only under Section 13 (1) (e) of the Act. Aggrieved by that decision, defendants preferred appeal. By the impugned order, Appellate Court has allowed the appeal. Aggrieved by this decision, plaintiff has instituted the present Writ Petition. By order dated 23<sup>rd</sup> June, 1997, Rule was issued and interim relief was refused.

7. In support of this petition, Mr. Parab strenuously contended that the Appellate Bench was not justified in interfering

with the well reasoned judgment passed by the learned trial Judge. He submitted that after considering the material on record, while answering issues No. 2 and 5, the learned Trial Judge held that statutory tenant not having interest in the premises could not in law assign the premises. He has taken me through the judgment of the trial Court and more particularly paragraph 10 thereof.

8. With the assistance of Mr. Parab, I have gone through the material on record. A perusal of material on record indicates that defendant No.1 had executed registered Deed of Assignment in favour of defendant No.2 on 2<sup>nd</sup> January, 1971. It is also not in dispute and is a matter of record that the plaintiff has purchased the property under a Deed of Conveyance dated 3<sup>rd</sup> December, 1983. While allowing the appeal, the Appellate Bench noted that the plaintiff neither examined his predecessor in title nor examined erstwhile tenant Ramji Govind Kurlawala who was running business in the name of defendant No.1. The Appellate Bench also considered the admissions given by the plaintiff during the course of cross-examination. In particular, plaintiff's witness admitted that same business is being run by defendant No.2 in the suit premises after assignment of the business by Mr. Kurlawala to

defendant No.2. Appellate Bench also noted that at no point of time, either during the course of examination-in-chief or in the cross-examination of plaintiff's witnesses, dispute was raised about validity or legality of the Deed of Assignment. In other words, Deed of Assignment was not challenged by the plaintiff. The Appellate Bench also considered the evidence adduced by defendant No.2. He denied the suggestion that the defendants are not interested in carrying on Medical Stores business and that defendant No.2 is interested only in the suit premises. Defendant No.2 further denied the suggestion that as per the Deed of Assignment dated 2<sup>nd</sup> January, 1971 at Exhibit 10, medical business was not assigned to him but the suit premises was given to him as a licensee.

9. The Appellate Bench also alternatively considered the case under Section 15 (2) of the Act and observed that in any case the defendants are protected sub tenants. After considering the material on record, as also for the reasons recorded in paragraphs 19, 24 to 47, 54 to 56 of the judgment of Appellate Bench, I do not find that Appellate Bench committed any error in allowing the appeal and reversing the trial Court's judgment. Plaintiff was not

in a position to demonstrate that the findings recorded by the Appellate Bench are perverse being based upon no evidence or that they are contrary to the evidence on record. The plaintiff was also not in a position to demonstrate that the findings recorded by the Appellate Bench are perverse. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Rule is discharged. In the circumstances of the case, there shall be no order as to costs. Order accordingly.

**[R.G. KETKAR, J.]**