

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2895 OF 2025

WITH

INTERIM APPLICATION NO.6843 OF 2025

Umer Mohd Mubarak Hussain Ansari ...Petitioner
legal heir of Mubarak Hussain Mazuharuddin
Ansari

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. Lobo Glenn Anthony, for the Petitioner.

Mr. Sanjay D. Rayrikar, AGP, for the Respondent No.1.

CORAM: MADHAV J. JAMDAR, J.

DATED : 24th APRIL 2025

P. C.:

1. Heard Mr. Lobo, learned Counsel appearing for the Petitioner.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the order dated 3rd January 2025 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in E. Appeal No.17 of 2024 as well as to the Judgment and Decree dated 12th January 2024 passed by the learned Judge, Small Causes Court, Mumbai in

Obstructionist Notice No.1 of 2019 in R.A.E. Suit No.57/153 of 1993. The learned Judge of the Small Causes Court, Mumbai made the said notice absolute and directed the Obstructionist i.e. the present Petitioner to deliver vacant and peaceful possession of the suit premises to the Plaintiff. The said Judgment and Decree dated 12th January 2024 passed by the learned Judges, Small Causes Court, Mumbai in Obstructionist Notice is confirmed by the learned Appellate Court by Judgment and Decree dated 3rd January 2024.

3. Mr. Lobo, learned Counsel appearing for the Petitioner submitted that the Petitioner is the son of the original tenant and therefore, after the death of the original tenant, he becomes the tenant and therefore, he has independent right, title and interest and therefore, both the learned Courts have committed grave illegality in passing the impugned orders.

4. Perusal of the record shows that the Respondent Nos.2 to 4 filed R.A.E. Suit No.57/153 of 1993 in the Small Causes Court, Mumbai against Respondent No.5-Zaheeruddin Masruddin Majid. The said suit has been decreed by the learned Trial Court by the

Judgment and Decree dated 4th December 2010. The Respondent No.5 preferred the Appeal No.13 of 2011 before the learned Appellate Bench of the Small Causes Court, Mumbai. The said Appeal was dismissed by the learned Appellate Bench. Civil Revision Application (ST) No.13577 of 2018 was thereafter dismissed. The Plaintiff filed Execution Application No.3 of 2018 and when the Bailiff went to execute the warrant of possession against the Defendant/Judgment Debtor on 2nd April 2019, at that time, Defendant/Judgment Debtor was not found in the suit premises and the present Petitioner i.e. Obstructionist, obstructed the execution of the decree. The present Petitioner i.e. Obstructionist is brother of the Defendant/Judgment Debtor.

5. Perusal of the record further shows that the original tenant was father of the Petitioner. The present Petitioner in cross-examination has admitted that he was not conducting the business in the said premises and the business was being conducted in the suit premises by the Defendant. He further admitted that he was aware that in the year 1993, landlords have filed suit against the Defendant. Both the learned Courts have held that the documents on which the Petitioner has relied to show his independent right,

title and interest, are the documents in the name of his father. Thus, in the facts and circumstances, it cannot be said that the finding recorded by both the Courts that the Petitioner has failed to prove his independent right, title and interest is finding which is not in accordance with the evidence on record.

6. As the suit is of the year 1993, the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 will apply. Section 5(11) (c) of the said Act reads as under:

“5. In this Act unless there is anything repugnant to the subject or context—

....(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes- (a) such sub-tenants and other persons as have derived title under a tenant 37[before the commencement of the Bombay Rents. Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959];

[(aa) any person to whom interest in premises has been transferred under the proviso to 39[sub-section (1) of]section 15;]

(b) any person remaining after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title 37 [before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance. 1959;]

(c) (i) in relation to premises let for residence, any member of the tenants' family residing with the tenant at the time of, or within three months

immediately preceding, the death of the tenant as may be decided in default of agreement by the Court, and

(ii) in relation to premises let for business, trade or storage, any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage as the case may be, in the said premises and as may be decided in default of agreement by the Court;]"

(Emphasis added)

7. Thus, it is clear that evidence on record shows that at the time of the death of the father of the original Defendant and the Obstructionist, the premises was being used by the Defendant. Thus, the Defendant becomes the tenant of the suit premises after the death of the original tenant. The position on record clearly shows that the Petitioner has no right, title and interest.

8. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

9. In view of the dismissal of the Writ Petition, nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]

SONALI
MILIND
PATIL
Digitally
signed by
SONALI
MILIND
PATIL
Date:
2025.04.28
10:28:25
+0530