

D.S. Prayag Vs Mai Lele (Smt.)

Court: Bombay High Court

Date of Decision: Dec. 6, 1977

Acts Referred: Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 " Section 23A, 23A(2)

Hon'ble Judges: R.A. Jahagirdar, J

Bench: Single Bench

Advocate: V.N. Kaulgekar, for the Appellant; G.R. Karve, for the Respondent

Final Decision: Allowed

Judgement

R.A. Jahagirdar, J.

This petition raises the question of interpretation of section 23-A of the Bombay Rents, Hotel and Lodging House

Rates Control Act, 1947 (hereinafter referred to as the Bombay Rent Act). The petitioner filed a suit being Civil Suit No. 598 of 1977 in the Small

Causes Court at Pune for a declaration that he is entitled to put a T.V. antenna of the tiled roof of his house which he has taken on rent from the

respondent. An additional prayer in the suit was for an injunction restraining the respondent from preventing the petitioner from fixing the T.V.

antenna on the tiled roof. The allegation was that the respondent was preventing the petitioner from so fixing the antenna.

2. In that suit on an application made, ad interim injunction was given on 4-3-1977. It was subsequently vacated by an order dated 30-4-1977.

Against the order the petitioner preferred an appeal being Miscellaneous Civil Appeal No. 108 of 1977 which was heard and dismissed by the

learned Assistant Judge, Pune, by his judgment and order dated 1-9-77. Against the order of the learned Assistant Judge, the petitioner has

approached this Court under Article 227 of the Constitution. Before, I proceed to examine the contentions of Mr. Kaulgekar appearing for the

petitioner in this petition, few admitted facts must be mentioned. The petitioner is a tenant of a tenement on the ground floor of a building owned by

the respondent. The tenement which is in possession of the petitioner as a tenant has a tiled roof over it. The petitioner one desires to para a T.V.

antenna on the tiled roof and in this according to the petitioner, there is obstruction from the respondent.

3. Mr. Kaulgekar the learned Advocate has criticised the judgment of the two courts below by pointing out that the provisions of section 23-A of

the Bombay Rent Act are totally inapplicable to the facts and circumstances of the case. The two courts below have vacated the injunctions by

relying upon the provisions of the said section and by holding that the petitioner cannot rush to the Court for the relief of injunction unless he has in

the first place approached the landlord as provided u/s 23-A of the Bombay Rent Act. The procedure prescribed u/s 23-A of the Bombay Rent

Act is that the tenant should apply to the landlord for permission to put up and maintain a radio or television aerial"" on the terrace of the building in

possession of the landlord"" and if the landlord refused to give any reply or refuses to give his consent, then the tenant is given a right to approach

the Court for the necessary direction to the landlord. The error committed by the two courts below was in thinking that the tiled roof of the

tenement in possession of the petitioner tenant is a terrace of the building in possession of the landlord. Mr. Kaulgekar says that a slopping tiled

roof could not by any stretch of imagination be regarded as a terrace.

4. Mr. Karve, the learned Advocate appearing in opposition, on the other hand relied upon a certain meaning given in the dictionary and has

suggested that even a tiled roof can be a terrace. It is not necessary to resolve this synthetic conflict between the learned Advocates. In my

opinion, the question is not whether a tiled roof is a terrace. The question is whether a tiled roof of this particular house is a terrace in possession of

the landlord. The rationale behind the provisions of section 23-A of the Bombay Rent Act is that if a tenant wants to install an aerial on the

terrace of a building and if this cannot be done because the tenant is in the possession of the landlord, he should not be denied the facility of

installation of an aerial. In order to enable him to avail of this facility, a right has been given to the tenant u/s 23-A of the Bombay Rent Act to apply

to the Court failing an agreement with the landlord. In the case before me there is no question of the landlord being in possession of the terrace in

the sense that it is necessary for the tenant to obtain the landlord's permission to go to the roof of the tenement. It is an open terrace if at all it is a

terrace and it is definitely not in actual possession of the landlord though constructively the landlord is in possession of every tenement owned by

him. Here there is no question of issuing any direction of the landlord under sub-section (2) of section 23-A of the Bombay Rent Act because the

landlord is not in a position to actually prevent the tenant from having the facility of an aerial on a tiled roof. There is, therefore, a patent error in

the judgments of both the courts below which have held that the provisions of section 23-A of the Bombay Rent Act are applicable to the facts

and circumstances of this case.

5. Mr. Karve the learned Advocate appearing for the landlord has expressed an apprehension that if the tenant is allowed to installation an aerial or

an antenna on the tiled roof it may lead to considerable damage to the property unless it is done in accordance with the instruction or the direction

that the landlady might chose to give. He relied upon the Commissioner"s report made available in the trial Court wherein it is mentioned that there

is a damage to the tiled roof of the premises because of the installation of an antenna which the petitioner did, according to Mr. Karve, taking of an

antenna which the petitioner did, according to Mr. Karve, taking advantage of the ad interim injunction given by the trial Court. If the petitioner in

installing an antenna causes damage to the property or erects any permanent structure, the landlord has always remedies available against the tenant

under the provisions of the Bombay Rent Act itself and he could pursue these remedies. Ordinarily a tenant is entitled to enjoy the property which

has been leased to him and a facility in modern times cannot be denied to the tenant. The tenant is, therefore, entitled to installation an aerial for a

Radio or a T.V. on the tiled roof which is in his possession and which is not in the possession of the landlord. He is, therefore, entitled to an

injunction against the respondent if she, unreasonably or under misconception of her rights, obstructs the petitioner in the installation of such an

aerial. The petition must therefore be allowed. An injunction till the disposal of the suit will issue in terms of the prayer made by the petitioner in

Exhibit D dated 4-3-77. Rule made absolute. No order as to costs.