

# SUPREME COURT OF INDIA

Janaklali S. Gupta (Deceased)

Vs.

Namdeo Mahadeo (Deceased) By Lrs.

(V Khare and S Phukan JJ.)

17.11.1999

## ORDER

**V.N. KHARE, J.**

1. The Appellants are the landlord of the premises in dispute. Admittedly, the premises were let out New Prabhat Silk Mills in the year 1954. The Mill, and the predecessors-in-interest of the Respondents shall hereafter be referred to as per their rank in the original suit for the sake of convenience and reference as Defendants 1, 2 and 3 respectively. It appears that originally Defendants 2 and 3 were the employees of Defendant 1 and they were given residence in Rooms 1 and 3 respectively in the aforesaid premises.

2. Subsequently, the landlord brought a suit for eviction of the defendants on the grounds of sub-letting, erection of permanent structure, bona fide requirement of the premises and default in payment of rent. The Small Cause Court decreed the suit excepting Defendants 2, 3, 5 and 7.

3. Aggrieved, the landlord filed an appeal against that part of the order whereby the suit against Defendants 2, 3, 5 and 7 was dismissed. The appellate court found that Defendants 2 and 3 were having a service tenancy and therefore were not covered by the protection made available to the sub-tenant by the Act. The appellate court also found that since the sub-tenant made construction which was of a permanent nature it amounted to waste and nuisance and therefore they were liable to be ejected on those grounds. Consequently the appeal filed by the landlord was allowed.

4. Aggrieved, Defendants 2 and 3 preferred a writ petition under Article 227 of the Constitution before the Bombay High Court. The Bombay High Court allowed the writ petition and set aside the judgment of the appellate court.

5. It is against the said judgment the landlord is in appeal before us. Learned Counsel appearing for the Appellant urged that the view taken by the High Court that Defendants 2 and 3 were protected under the Act is erroneous since they were having a service tenancy. According to the learned counsel a person having service tenancy is a licensee and not a sub-tenant. The expression licensee has been defined in Section 5(4A) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which provides that a licensee does not include a person in the service or employment of the tenant. There was ample evidence on record to show that Defendants 2 and 3 had been paying Rs. 25 per month to their employer and were in exclusive possession of the premises. In such circumstances the only status which Defendants 2 and 3 could enjoy was of a sub-tenant. Since their status as a sub-tenant was protected under the Act, they could not have been ejected from the premises in dispute.

6. So far as the next submission that the defendants had made constructions which were of permanent nature is concerned, the finding is that the alleged construction was made by Defendant 2 on area which is outside the premises let out to him and for which the landlord has already filed a suit which is pending before the Bombay City Civil Court. So far as defendant 3 is concerned, there is no finding that he has made any construction which is permanent in nature. For all these reasons, the High Court was justified in holding that Defendants 2 and 3 had not made any permanent construction.

7. We, therefore, do not find any merit in these appeals. The appeals fail and are accordingly dismissed. There shall be no order as to costs.