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C.A.No. 3417 OF 1998

ITEM No . 108

COURT NO.3

SEC.IX

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

C.A.No. 3417/1998

Kesharlal H.Pardeshi Appellant (s)

versus

Vithal S.Patole (Dead) by Lrs.

Respondent (s)

Date: 15/1/2004 These matters were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE R.C.LAHOTI

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE B.P.SINGH

For Petitioner (s)Mr. S.M.Jadhav,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed.

There is no order as to costs.

(SUMAN WADHWA)(RADHA R. BHATIA)

COURT MASTER

COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3417 OF 1998

Kesharlal H.Pardeshi ... Appellant

vs.

Vithal S.Patole (Dead) by Lrs. ... Respondents

O R D E R

The respondent tenant who has died and is appearing by his legal heirs, the legal heirs though noticed has not chosen to appear and contest the appellant. The suit properties are the residential premises bearing No.135 Ward No.1 within the limit of Daund Municipal Corporation in the State of Maharashtra. Proceedings in the courts below have proceeded on the premises that the provisions of the Bombay Hotel and Lodging House (Rent Control) Act 1947 are applicable to the appellant. The appellant initiated proceedings for the eviction of the tenant on the grounds available

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under clause (k) and (l) of sub-section (1) of Section 13 of the Act pleading that the premises have not been used for residential purpose for which they were let for continuous period of six months immediately preceding the date of the suit and that remained after commencement of the Act had built or acquired vacant possession of suitable residence. The trial court and the appellate court found the ground for eviction having been made out and hence directed that decree for recovery of possession of the premises to be passed. The tenant filed a petition under Art. 227 of the Constitution of India in the High Court. The High Court has allowed the petition and directed the suit to be dismissed forming an opinion that the appellant (that is the respondent in the High Court) was not a landlord entitled to suit for recovery of possession. On the concurrent finding arrived at by the courts below the High Court found that the appellant had

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been receiving the rent from the tenant through out and the tenant was treating the appellant herein as the landlord. The suit premises were owned by one month's as expired and survived by his widow Shobha Bai and two minor children. The appellant is the brother of late Manik Singh. Shobha Bai entered the witness box and she also stated that it was the appellant who was managing the property on his behalf and collecting the rent. The term 'landlord' has been defined in clause (3) of Sec.5 of the Act: "Any person who is for the time being receiving or entitled to receive rent in respect of any premises whether on his own account or on his behalf of any other person is also included in the definition of 'landlord'." This definition of 'landlord' given in the order by the High Court also. We are clearly of the opinion that the High Court in exercise of its jurisdiction under Art.227 of the

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Constitution of India ought not to be interfered with the findings arrived at by the two courts below and recorded a finding holding that the appellant not to be landlord which is inconsistent with the definition of landlord in clause (3) of Sec.5 of the Act. The appeal is allowed. The judgment of the High Court is set aside and the decree of the trial court as upheld by the High Court is restored. There is no order as to costs.

.....J. (R.C.LAHOTI)

.....J.  
(ASHOK BHAN)

.....J.  
(B.P.SINGH)

New Delhi;  
January 15, 2004.