

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 95 OF 1993

Nazir Hasansaheb Bagwan Bhumkar	.. Petitioner
vs.	
Suryakant L. Godne	.. Respondent

Mr. S.G. Kudle for the Applicant.
Mr. D.S. Patil for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 26 JUNE 2015.

P.C. :-

1] This revision application challenges the order dated 9 February 1993 made by the Civil Judge, Junior Division, Barshi allowing the respondent to execute consent decree dated 20 September 1989 in Regular Civil Suit No. 447 of 1988.

2] Mr. Kudle, learned counsel for the petitioner, made the following submissions in support of this application.

(a) That the consent decree was unenforceable in law, particularly because the provisions contained therein were penal in nature;

(b) In any case, the respondent having failed to issue statutory notice, prior to seeking the petitioner's eviction, the execution proceedings ought to have been dismissed;

(c) Without prejudice to the aforesaid, there is material on record which indicates that the petitioner had committed no default in compliance with the terms of the consent decree. This is evident not only from the conduct of the petitioner prior to filing of the execution proceedings by the respondent, but also later, when the petitioner send rents in respect of the suit premises to the respondent by money order on several occasions, but the respondent consistently refused to accept the same.

3] Having considered the aforesaid submissions and perused the record, this Court is unable to accept any of the same. The consent decree, *inter alia*, records that in case there is default of over six months on the part of the petitioner, in payments of rents, the decree shall be executed in a Court of law. Such a decree cannot be said to be unenforceable and in any case, it was not demonstrated why such a decree is unenforceable.

4] There is nothing penal in the terms and conditions recorded in the consent terms on the basis of which, the consent decree came to be made. At no stage, did the petitioner question the consent decree

or allege that the same was result of any fraud or coercion practiced upon him. Besides, the consent decree merely provides that if there is a default of six months, in the matter of payment of rent, the decree shall become executable. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, prior to its amendment in the year 1987 did provide that a landlord can recover possession of the tenanted premises where a tenant commits default in the matter of payment of rents for six months. From the year 1987, the position underwent a change and even a default for one month was made a ground for eviction. The consent decree in the present case made on 20 September 1989 had provided that execution could be filed where there was default in payment of rents for six months. The consent decree, in such circumstances, far from being penal, was in fact quite generous to the petitioner.

5] Mr. Kudle did contend that the consent decree had provided that the respondent has to issue rent receipts and there was non-compliance on the part of the respondent. The reply filed by the petitioner to the execution application, however, raises no such contentions. Rather the contention is that some receipts were issued but the petitioner, being illiterate did not understand what was

stated in such receipts. Significantly, no receipts have been produced on record. If indeed, no receipts were issued to the petitioner despite his having paid the rent, it is only reasonable to expect that the petitioner protests in writing as against any alleged non-compliance with the terms of the consent decree. There is no such written protest on record. The money orders relate to period after the execution application was filed. If indeed, rents were refused, nothing prevented the petitioner from sending the rents by way of money order. The material on record, in no manner establishes that the rents were indeed paid or that defaults were not committed.

6] The impugned order, upon consideration of the material on record, has come to the conclusion that there was default on the part of the petitioner in the matter of payment of rents for over six months. Even if the case of the petitioner as set out in the reply is to be considered, even the same establishes defaults on the part of the petitioner. The case as set out by the petitioner in the reply is not backed by any material and therefore, there is really no warrant to take the same into consideration.

7] There is no question of service of any statutory notice prior to filing of proceedings to execute consent decree dated 20 September 1989. Mr. Kudle failed to demonstrate any provisions of law which warranted the issue of any such statutory notice. The consent decree dated 20 September 1989 had attained finality. The consent decree itself provided for its execution in the event of defaults in payment of rents by the petitioner for a period of six months. There is, accordingly, no merit in the contention of Mr. Kudle that the execution proceedings were incompetent for want of any alleged statutory notice.

8] In the aforesaid circumstances, there is no merit in the civil revision application and is consequently dismissed. There shall be no order as to costs.

9] At this stage, Mr. Kudle, seeks protection from eviction for a period of eight weeks, in order to take recourse against this judgment and order before the Hon'ble Apex Court. The request is reasonable and accordingly, in pursuance of the execution levied, the petitioner shall not be evicted for a period of eight weeks from today. This protection is, however, subject to the petitioner filing, in this Court within a period of two weeks from today, the usual

undertaking to the effect that the petitioner continues in possession of the suit premises and further, the petitioner will not create any third party rights therein or induct any other person therein. Copy of such undertaking to be furnished to the learned counsel for the respondent. In case, no such undertaking is filed within a period of two weeks, then the petitioner shall not avail the benefit of this protection.

(M. S. SONAK, J.)

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