

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1926 OF 2015

M/s. Cafe Hornby & Excel Stores	]
a partnership concern through its partner	]
Mr. Ruhullah Naimi carrying on business at	]
Ground Floor, National Insurance Building	]
206, Dr. D N Road, Fort, Mumbai – 400 001.	]..... Petitioner.

Versus

The Life Insurance Corporation of India	]
a statutory Corporation, established	]
under the Life Insurance Corporation Act,	]
1956, having its Western Zonal Office at	]
Yogakshema, 3 rd Floor, East Wing,	]
Jeevan Bima Marg, Mumbai – 400 021.	]..... Respondent.

Mr. Navroz Seervai, Senior Advocate a/w Mr. Ranbir Singh, Mr. Hiren G Shah i/by Prakash & Co. for the Petitioner.
Mr. Shrinivas Bhavé, with Mr. Komal Vora and Mr. Abhijeet Page i/by Bhavé & Co. for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 22nd April 2015

ORAL JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 31/10/2014 passed by the Estate officer who is trying the proceedings in question being Case Nos. 728 and 728A of 1997 for eviction of the Petitioner from the premises in question.

3 The Petitioner claims to be a tenant in respect of the ground floor of the Building known as National Insurance Building situated at 206, Dr. D.N. Road, Fort, Mumbai 400 001. The said building was originally of the ownership of the National Insurance Company Limited and pursuant to the nationalization of the insurance business is now of the ownership of the Respondent No.1 i.e. the Life Insurance Corporation of India. The Petitioner claims to be a tenant of the premises since prior to the year 1958.

4 A notice determining the Petitioner's authority to occupy the premises came to be issued on 9/1/1990 by the Respondent No.1. The Petitioner replied to the said notice on 7/2/1990. The Respondent No.1 thereafter by its advocate's notice dated 2/4/1990 terminated the tenancy of the Petitioner. The Respondent No.1 thereafter filed an Application No.728 & 728A of 1997 invoking Sections 5 and 7 of the Public Premises Act, 1971 (for brevity sake herein after referred to as "the PP Act") before the Estate Officer against the Petitioner and one Kamat Restaurant, and Singer India Pvt. Ltd. Thereafter there were some intervening proceedings which have taken place leading to the matter being remanded back to the Estate Officer. However, the said facts are not relevant in the context of the challenge raised in the above Petition.

5 It seems that an application for amendment was moved by the Respondent No.1 seeking amendment of the original Application No.728 & 728A of 1997. The said amendment application was allowed by the Estate Officer. Whilst the Petitioner was contemplating to challenge the order passed by the Estate Officer allowing the application for amendment, the Apex Court rendered its judgment in the case of Dr.Suhas H Pophale v/s. Oriental Insurance Co. Ltd. reported in 2014(4) SCC 657. In so far as the said judgment is concerned, the said case concerns the eviction of the tenant/occupant Dr. Suhas Pophale from the premises in question which are of the ownership of the Oriental Insurance Co. Ltd. In the context of the present Petition what is required to be noted is that by the said judgment the Apex Court has carved out two categories of tenants/occupants who are exempted from the application of provisions of the PP Act. The first category are those tenants who are in occupation since prior to 16/09/1958 i.e. prior to the Act becoming applicable, and the second category are those who come in occupation thereafter but prior to the date of the concerned premises becoming public premises and are covered under a protective provision of the State Rent Act. The Apex Court by the said judgment has ruled that for the eviction of the said two exempted categories, the public authorities would have to take recourse to the provisions of the Bombay Rent Act which is now the Maharashtra Rent Control Act.

6 The Petitioner relying upon the said judgment in **Dr.Suhas Pophale's** case (supra) questioned the jurisdiction of the Estate Officer to initiate the proceedings as according to the Petitioner it falls in one of the exceptions carved out by the Apex Court in **Dr.Suhas Pophale's** case (supra). The Petitioner accordingly filed the instant application and the principal relief sought was for setting aside the proceedings on the ground of lack of jurisdiction on the part of the Estate Officer in view of the non-applicability of the PP Act in view of the judgment rendered in **Dr.Suhas Pophale's** case (supra).

7 The said application was replied to on behalf of the Respondent No.1 herein and it was denied that the Estate officer did not have the jurisdiction to entertain the proceedings filed for eviction of the Petitioner.

8 The Estate Officer considered the said application and has by the impugned order dated 31/10/2014 rejected the said application and thereby ruled that he has the jurisdiction to proceed with the said eviction proceedings. As indicated above it is the said order dated 31/10/2014 which is taken exception to by way of the above Writ Petition.

9 At this stage it is required to be noted that the SLP filed by the Respondent No.1 herein i.e. the Life Insurance Corporation of India against

another occupant one Vita Pvt. Ltd being SLP No.19293 of 2014 had come up before a three-Judge Bench of Apex Court on 15/12/2014 when the Apex Court passed the following order :-

“Notice on the application for condonation of delay as also on the Special Leave petition. Learned counsel, on caveat, accepts notices. Counter affidavit and rejoinder affidavit are not necessary for the purpose of disposal of the Special Leave Petition. Matter will be heard in usual course on a non-miscellaneous day.”

The said SLP thereafter came up before a two-Judge Bench of the Apex Court on 17/3/2015 on which day the Apex Court passed the following order :-

“In these Petitions, in fact the ratio decided by the two-Judge Bench of this Court in the case of Suhas H Pokhale Vs. Oriental Insurance Company Limited and its Estate Officer – 2014 (2) SCC 657, is contrary to the decision of the Constitution Bench rendered in the case of Ashoka Marketing vs. Punjab National Bank – 1990(4) SCC 406. Therefore, these matters need to be heard by a three-Judge Bench.

Hence, the Registry is directed to place the record of these matters before the Hon'ble Chief Justice of India for constituting a three-Judge Bench.

Interim order to continue, if any.

Liberty is given to the parties to mention for early hearing.”

The Apex Court has therefore referred the matter to a three-Judge Bench for the reasons mentioned in the said order dated 17/3/2015.

10 The learned Senior Counsel appearing for the Petitioner Shri

Seervai has fairly tendered the copies of the aforesaid two orders of the Apex Court. The learned Senior Counsel for the Petitioner also fairly conceded that the said two orders were not before the Estate Officer when he decided the application filed by the Petitioner as the said orders were passed post the decision rendered on the said application.

11 The learned Senior Counsel Shri Seervai for the Petitioner would question the impugned order passed by the Estate Officer on the ground that the refusal of the Estate Officer to consider the judgment of the Apex Court in **Dr.Suhas Pophale's** case (supra) and by making the observations that he has made amounts to subversion of the judicial system. The learned Senior Counsel would contend that in making the said observations, the Estate Officer has breached all canons of judicial propriety and discipline and therefore the impugned order cannot stand and is required to be quashed and set aside. The learned Senior Counsel for the Petitioner Shri Seervai would however fairly concede that in view of the order dated 17/3/2015 passed by the Apex Court, the Petitioner may not be entitled to setting aside of the proceedings under the PP Act but as a matter of being fair to the parties the proceedings are required to be stayed, till such time as the three-Judge Bench of the Apex Court decides the matter. The learned Senior Counsel whilst questioning the jurisdiction of the Estate Officer sought to place reliance on the judgment of the Apex Court in the case of **Arun Kumar and others vs. Union of India and others** reported

in (2007) 1 SCC 732 wherein the Apex Court has held that the existence of jurisdictional fact is a sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction, and therefore, according to the learned Senior Counsel the adjudication of the issue of jurisdiction assumes importance.

12 Per contra, the learned counsel appearing for the Respondent No.1 Shri Bhave sought to rely upon the order dated 17/3/2015 passed by the Apex Court and would contend that since the matter has been referred to a three-Judge Bench in terms of the observations made in the said order, the proceedings which are going on since 1997 need not be stayed.

13 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above, the application filed by the Petitioner for setting aside the proceedings initiated against it was founded on the judgment of the Apex Court in Dr.Suhas Pophale's case (supra). As indicated above the said judgment carves out two exceptions i.e. to whom the PP Act does not apply and against whom the provisions of the relevant State Rent Act would have to be invoked for their eviction. The Estate Officer has considered the said application filed by the Petitioner and has rejected the same by the impugned order. It is required to be borne in mind that the order dated 17/3/2015 passed by the Apex Court was not before the Estate Officer

and he has therefore considered the application having regard to the judgment in **Dr.Suhas Pophale's** case (supra). The reading of the impugned order discloses that the Estate Officer has in terms made attempts to show how the judgment in **Dr.Suhas Pophale's** case (supra) is erroneous in so far as it carves out the two exceptions. The Estate Officer has by citing a hypothetical case has observed that the judgment in **Dr.Suhas Pophale's** case (supra) would lead to an anomaly which he has referred to on internal page No.24 of the impugned order. The said observations can therefore be said to be the basis on which the impugned order is founded. In my view, the Estate Officer in making the said observations that he has made can be said to have transgressed the limits of judicial propriety and discipline. There is merit in the submission of the learned Senior Counsel for the Petitioner that the observations made by the Estate Officer in the impugned order may amount to subversion of our judicial system, as the Estate Officer seems to be questioning the judgment of the Apex Court in **Dr.Suhas Pophale's** case (supra). If the Estate Officer wanted to distinguish the judgment in **Dr.Suhas Pophale's** case (supra), he ought to have done so in the manner that is required in terms of the well settled precedents of this Court as well as the Apex Court, and could not have done so in the manner that he has done in the present case. The Estate Officer in my view whilst adjudicating the said issue of jurisdiction which is raised on the basis of the judgment of the Apex Court in **Dr.Suhas Pophale's** case (supra) could not have made the observations referred to herein-above in the impugned order.

The exercise of the writ jurisdiction of this Court is therefor warranted. In my view, therefore, the impugned order would have to be quashed and set aside and is accordingly quashed and set aside. On setting aside of the order, the normal course would have been to relegate the matter back to the Estate Officer for a denovo consideration of the application. However, in the instant case, the order dated 17/3/2015 of the Apex Court would obviously have an impact in so far as the adjudication of the said issue of jurisdiction is concerned. The said order has been passed by the Apex Court post the adjudication of the instant application. The Apex Court as indicated above in the said SLP has referred the issue to a three-Judge Bench for the reason that the ratio decided by the two-Judge Bench in the case of Suhas H Pokhale vs. Oriental Insurance Company Limited is contrary to the decision of the Constitution Bench rendered in the case of Ashoka Marketing vs Punjab Bank. Hence in the light of the observation of the Apex Court in the order dated 17/3/2015 it is not necessary to relegate the matter back to the Estate Officer for a denovo consideration of the issue of jurisdiction.

14 The contention of the learned Senior Counsel appearing for the Petitioner that the proceedings be stayed till the decision is rendered by a three-Judge Bench of the Apex Court also cannot be acceded to. It is required to be noted that the proceedings are going on since the year 1997. Hence even assuming, as is sought to be contended by the learned Senior Counsel for the

Petitioner that the Apex Court has in the order dated 17/3/2015 only expressed a prima facie view. The fact that the Apex Court has made the said observation viz that the ratio decided by the two-Judge Bench in the case of Dr.Suhas H Pokhale is contrary to the decision of the Constitution Bench rendered in the case of Ashoka Marketing is required to be borne in mind. The interest of justice would therefore be served that by keeping the jurisdictional issue open for being agitated at the appropriate time the eviction proceedings are allowed to be proceeded with. It is clarified that the impugned order passed by the Estate Officer has been set aside for the reasons mentioned in the earlier part of this order and should not be construed as any expression of opinion by this Court on the said issue of jurisdiction. The impugned order is accordingly quashed and set aside and the following directions are issued :-

- [1] The issue of jurisdiction is kept open for being considered at the time of the challenge that may be raised to the final order that may be passed in the proceedings.
- [2] Needless to state that the contentions of the parties are kept open for being urged before the Estate Officer on the said issue for being urged before the Estate Officer who will deal with the same with the other issues that would be framed in the proceedings.
- [3] It is made clear that the Estate Officer is permitted to proceed with the eviction proceedings in question. The same to be undoubtedly decided by giving proper opportunity to the parties.

- [4] In the event the decision of the three-Judge Bench of the Apex Court pursuant to the reference made becomes available prior to the decision in the eviction proceedings, the Petitioner would be at liberty to move an appropriate application. The same would be considered by the Estate Officer having regard to the observations made herein above in the instant order.
- [5] Rule in the above Writ Petition to stand disposed of in terms of the above, with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]