

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6156 OF 2015**

Popat Tukaram Gore

..Petitioner

Vs.

Kashibai Pandurang Mane & Ors.

..Respondents

Mr. Dilip Bodake for the Petitioner

Mr. Mahindra Deshmukh for the Respondent Nos.1 and 2

CORAM : R. M. SAVANT, J.

DATE : 1st SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 9-6-2015 passed by the Learned Civil Judge Junior Division, Kadegaon, by which order, the application Exhibit 100 filed by the Petitioner i.e. the Original Defendant No.1 for stay of the proceedings under Section 10 of the Civil Procedure Code, came to be rejected. The said application Exhibit 100 has its genesis in the order dated 26-4-2013 passed by a Learned Single Judge of this Court in Writ Petition No.9529 of 2011 filed by the Petitioner.

2 Suffice it to state that in the said Writ Petition No.9529 of 2011 a direction came to be issued to the tenancy authority to decide the application being Tenacy/SR/96 of 1998 filed by the Petitioner under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for the short the said Act), as early as possible and within 3 months from the receipt of the writ of this

Court. The interim protection granted by this Court vide order dated 23-11-2011 was to continue till the disposal of the said application under Section 70(b). The said interim protection was by way of staying the Suit in question till the application filed by the Petitioner under Section 70(b) was decided. It seems that after the said order, the notices came to be issued to the parties for remaining present before the Tahsildar – Kagegaon and roznama accordingly came to be maintained in respect of the said proceedings. It appears that the parties were heard on 6-5-2015 in the said proceedings and the matter was kept on 16-6-2015 to consider whether the proceedings have to be proceeded with or not. It seems that prior thereto the Tahsildar – Kadegaon has submitted his report on 12-11-2014 informing the Trial Court that the proceedings being Tenacy/S.R./96 of 1998 has been disposed of on 2-11-2009. It is on account of the said report of the Tahsildar-Kadegaon that the Trial Court was insisting upon the Defendant No.1 to proceed with the Suit in question as there were no proceedings filed under Section 70(b) pending before the Tahsildar-Kadegaon. It is on account of the insistence of the Trial Court to proceed with the Suit in question that the Defendant No.1 i.e. the Petitioner herein has filed the application Exhibit 100 for stay of the Suit invoking Section 10 of the CPC.

3 The said application has been rejected by the Trial Court and the rejection is on the ground that the Petitioner/Defendant No.1 has misled this Court that Tenancy/SR/96 of 1998 is pending and has obtained an order to

decide the said matter within 3 months when Tenancy/SR/96 of 1998 was already decided and disposed of in the year 2009. It is further recorded by the Trial Court that the Defendant No.1 is misleading the Tenancy Court to reopen and decide the Tenancy Application as per the order and direction of this Court. The Trial Court has thereafter summed up by saying and concluded that the Defendant No.1 misled various courts throughout the proceedings. The Trial Court has therefore proceeded on the premise that the application i.e. Tenancy/SR/96 of 1998 has been filed by the Defendant No.1 and that the same has been disposed of in November 2009. The above Petition was initially heard by my Learned Predecessor for ad-interim relief on 3-7-2015 on which day the Learned Judge accepted the statement made on behalf of the Learned Counsel for the Petitioner that the application filed under Section 70(b) is pending and accordingly granted ad-interim relief in terms of prayer clause (c) whilst issuing notice to the Respondent Nos.1 and 2. The Respondent Nos.1 and 2 are now represented by the learned Counsel Mr. Deshmukh.

4 In the context of the challenge raised in the above Petition, it is required to be noted that the application was filed by the Defendant No.1 prior to the filing of the Suit, on the basis of which the Defendant No.1 raised the issue of tenancy in the Suit, wherein the issue of tenancy was framed and the application was filed by the Defendant No.1 to refer the said issue to the authorities exercising powers under the said Act. In the said context it is

required to be noted that the application which is annexed to the Writ paper book at page 157 bears the endorsement dated 7-10-1997 of the inward clerk of the Tahsil office Vita, which application it seems was also filed in the District Court in Sangli on 3-4-2000 when the parties were before the District Court in the proceedings arising out of an interlocutory order passed by the Trial Court. Apart from the said fact, it is also required to be noted that in the order passed by the Lower Appellate Court dated 29-9-2000 a reference has been made in the order wherein the Lower Appellate Court has observed that the Defendant No.1 has filed an application before the Tenancy Court under Section 70(b) of the said Act. Hence it is not as if there is no antecedent record of the said proceedings. As indicated above, the Trial Court has proceeded on the premise that the application filed by the Defendant No.1 is numbered as Tenancy/SR/96 of 1998. This was probably on the basis of the said number being mentioned in the order of this court disposing of the Writ Petition filed by the Petitioner. However, a reading of the said application Tenancy/SR/96 of 1998 discloses that the same was filed by the Plaintiffs i.e. the Respondents herein against the Petitioner seeking the relief that entry in respect of he being a protected tenant may not be made in favour of the Defendant No.1. It is the said application filed by the Plaintiffs which is numbered as Tenancy/SR/96 of 1998 which has been disposed of by the tenancy authorities by the order dated 2-11-2009.

In so far as the application filed by the Defendant No.1 is concerned, it is not the case of either of the parties that the said application has been decided. The confusion seems to have arisen on account of the wrong number which was given by the Defendant No.1 in the Writ Petition filed by him which was disposed of by this Court. It is also not the case of the Learned Counsel for the Respondent Nos.1 and 2 that the application filed by the Petitioner under Section 70(b) has been disposed of. It is his case that no such application has been filed by the Defendant No.1 and that he has obtained an order from this Court without there being any application. The Learned Counsel seeks to place reliance on a report of the Tahsildar-Kadegaon dated 12-11-2014, wherein he has only forwarded the documents relating to the application filed by the Plaintiffs i.e. Tenancy/SR/96 of 1998.

5 It is required to be noted that the application as originally filed by the Defendant No.1 was in the office of the Tahsildar-Vita. It appears that the office of Tahsildar-Kadegaon was established in the year 2005 and therefore the instant application would now have to be dealt with by the Tahsildar-Kadegaon. The Trial Court in my view has erroneously proceeded on the premise that since the application Tenancy/SR/96 of 1998 has been decided, the Defendant No.1 i.e. the Petitioner herein has misled this Court as well as the other courts. The least that was expected of the Trial Court was to see to it as to between which parties the application Tenancy/SR/96 of 1998 is and who

had filed the said application. It is without going into aforesaid aspects that the Trial Court has post haste arrived at a conclusion that the Defendant No.1 has misled this Court and obtained an order for deciding the application filed by him under Section 70(b) within 3 months. As indicated above, it is not the case of either of the parties that the application filed by the Defendant No.1 under Section 70(b) has been decided. That the papers are not found cannot be a reason to arrive at a conclusion which the Trial Court has. As indicated above, the said application bears the endorsement that it has been filed in the office of Tahsildar–Vita on 7-10-1997. It is further required to be noted that the Suit is of the year 1998, in my view, since the Trial Court has erred in arriving at the conclusion which it has arrived at in the impugned order has thereby refused to exercise a discretion which it was required to exercise having regard to the purport and intent of Section 10 of the Civil Procedure Code.

6 In view of the fact that the issue of tenancy raised by the Defendant No.1 is pending, in my view, the impugned order is required to be quashed and set aside and is accordingly quashed and set aside. The application Exhibit 100 would stand allowed. It is contingent upon the decision that would be rendered on the application filed by the Defendant No.1 under Section 70(b) which according to the Learned Counsel for the Petitioner has been substantially heard that the future course of action can be decided by the Trial Court. Since there is already an order directing the authority to decide the

application within 3 months which order has been passed as long back as on 26-4-2013 is concerned, the tenancy authority i.e. Tahsildar-Kadegaon is directed to decide the application latest by 31-10-2015, by giving proper opportunity to the parties.

7 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]