

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7938 OF 2014

Sarlaben N. Doshi and anr. .. Petitioners/
(Org. Defendant Nos.1 and 2.)

vs.

Smt. Jayshree P. Madhwani and ors. .. Respondents
(Org. Plaintiff No.1a to 1d &
Defendant No.3)

Mr. A.G. Damle, Senior Advocate for the Petitioners.
Mr. V.T. Lulia for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 1 JULY 2015.

P.C. :-

1] This petition challenges the order dated 16 April 2014 made by the Appellate Bench of the Small Causes Court allowing Revision Application instituted by the respondents and set aside the order dated 26 November 2013 made by the Small Causes Court.

2] The Small Causes Court by order dated 16 November 2011 had directed the petitioners to deposit in the Court rent/arrears at the rate of Rs.700/- per month from January 2011 and to continue to deposit the same on or before 10th day of each month till the final disposal of the suit.

3] The petitioners-tenants did not impugn the order dated 16 November 2011. However, on certain grounds, the same was impugned by the respondents-landlords by instituting a revision application. During pendency of the revision application, there was no interim order in regard to the order of deposit dated 16 November 2011. The revision application instituted by the respondents was ultimately disposed of on 30 March 2013. The review against the order dated 30 March 2013 was dismissed in August 2013.

4] The petitioners in September 2013 applied for condonation of delay in complying with the directions for deposit contained in the order dated 16 November 2011. The grounds stated was that there was no time limit fixed in the order dated 16 November 2011 and in any event since revision and review petition were pending in regard to the order dated 16 November 2011, there was sufficient cause, due to which the rents were not deposited earlier.

5] The Small Causes Court, by its order dated 26 November 2013 has purported to condone the delay by observing that since the respondents have themselves preferred revision and review petition

as against the order dated 16 November 2011, it was clear that the respondents were themselves not accepting the order dated 16 November 2011. Consequently, the Small Causes Court reasons that the respondents cannot really object to condonation of delay in the matter of deposits in pursuance of the order dated 16 November 2011.

6] The Revisional Court, by the impugned order dated 16 April 2014 has interfered with and has set aside the order dated 26 November 2013 made by the Small Causes Court.

7] Mr. Damle, learned senior advocate appearing for the petitioners, has submitted that the Appellate Bench has exceeded the bounds of its revisional jurisdiction by interfering with the order dated 26 November 2013 made by the Small Causes Court. The Small Causes Court, had merely exercised its discretion and there was neither any illegality nor any perversity in the exercise of the same. In any case, the order dated 26 November 2013 was not vitiated by any jurisdictional error, thereby warranting interference under the revisional jurisdiction.

8] Mr. Lulia, learned counsel appearing for the respondents, on the other hand defended the impugned order by pointing out that the proceedings are pending since the year 1995 and further, there was no discretion vested in the Small Causes Court to condone the delay in the matter of deposits of rent. In this regard, Mr. Lulia placed reliance upon the decision of the Hon'ble Supreme Court in case of *Ganpat Ladha vs. Sashikant Vishnu Shinde - AIR 1978 SC 955*.

9] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the impugned order. In the first place, it is not the petitioners, who had questioned the order dated 16 November 2011, by which they were directed to deposit arrears as well as make future payments of rent at the rate of Rs.700/- per month. The order dated 16 November 2011 may have been challenged by the respondents, but the same was certainly deemed to have been accepted by the petitioners, for want of any challenge by them. Secondly, even in the revision petition instituted by the respondents, there was no stay or restraint upon the implementation of the order dated 16 November 2011. The revision application was instituted by the respondents, because it was their case that there were arrears of rent from the

year 1992 and by the order dated 16 November 2011, the only arrears from January 2011 directed to be deposited. Accordingly, the pendency of revision application at the behest of the respondents and that too, seeking arrears from 1992 was certainly not a ground for the petitioners to default in the payments of rent and arrears from the year 2011 as directed by the order dated 16 November 2011. Thus, even assuming that any discretion was vested in the Small Causes Court in a matter of this nature, it is clear that the same was indeed exercised in an unreasonable manner, without advertng to relevant circumstances. There is accordingly, no reason to interfere with the impugned order, which has set aside the order dated 26 November 2013 made by the Small Causes Court.

10] That apart, the matter of this nature, is extremely doubtful whether any discretion, of the nature purported to be exercised by the Small Causes Court was at all vested in it. The defaults in payments of rent, despite orders for deposits, have certain statutory implication in the scheme of provisions contained in the Rent Act. Such defaults, by themselves afford cause of action and to a certain extent entitle the landlord to seek orders of eviction. The Hon'ble Supreme Court in case of *Ganpat Ladha (supra)*, at paras 11 and 12

has made the following observations, which are quite apposite in the facts and circumstances of the present case.

11. *It is clear to us that the Act interferes with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord despite opportunities given by law 'in that behalf. Thus, section 12(3)(a) of the Act makes it obligatory for the Court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati, J) in [Hatilal Balabhai Nazar v. Ranchodbhai Shankarbhai Patel & Ors.](#)- AIR 1968Guj172. If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under section 12(3)(a) to get a decree for eviction. But where the conditions of Section 12 (3)(a) are not satisfied, there is a further opportunity given to 'the tenant to' protect himself against eviction. He can comply with the conditions set out in Section 12 (3) (b) and defeat the landlord's claim for eviction. If, however, he does not fulfil those conditions, he can not claim the protection of section 12(3) (b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exercisable in favour of the tenant can be found in section 12(3) (b) even where the conditions laid down by it are not satisfied. We think that Chagla, C.J., was doing nothing less than legislating in Kalidas Bhavan's case (supra), in converting the provisions of section 12 (3) (b) into a sort of discretionary jurisdiction of the Court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear. Section 12 (3) (b) does not create any discretionary jurisdiction in the Court. It provides protection to the tenant on certain conditions and these conditions have to be strictly*

observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of Courts.

12. Lastly we think that the High Court committed a gross error in interfering, upon an application under [Article 227](#) of the Constitution with what was a just and proper exercise of its discretion by the Court of Small Causes in Bombay even on the erroneous view that the Court had a discretion in the matter. The High Court, without even considering or setting aside the findings of the Court in regard to the circumstances calling for the, exercise of a discretion in favour of the appellant. Allowed the application under [Article 227](#) of the Constitution. This, we think, was quite unwarranted. We feel certain that the High Court would not have fallen into such an error if its attention was drawn to the law as laid down by this Court in *Babhutmal Raichand Oswal vs. Laxmibai R. Tarte & anr.* - AIR 1975SC 1297. There, this Court, in an appeal by special leave from a judgment of the Bombay High Court observed (at p. 1297) :

"It is a litigation between landlord and tenant and as is usual with this type of litigation, it has been fought to a bitter end. Much-of the agony to, which the tenant has been subjected in this litigation would have been spared if only the High Court had kept itself within the limits of its supervisory jurisdiction and not ventured into fields impermissible to it under [Article 226](#) or [Article 227](#) of the Constitution"

*A finding as to whether circumstances justify the exercise of a discretion or not, unless clearly perverse and patently unreasonable is, after all, a finding. of fact only, which could not be interfered with either under [Article 226](#) or under [Article 227](#) of the Constitution. In *Babhutmal Raichand Oswal's* case (*supra*) this Court also said (at p. 1302)*

"It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under [Article 227](#), interfere with findings of fact recorded by the

subordinate court or tribunal. Its function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority."

11] Applying the aforesaid principles as well, there is no reason or case made out warranting interference with the impugned order. This petition is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

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