

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7798 OF 2014

Shri. Soman Nair .. Petitioner
vs.
Mrs. Cathrine Bhthelho and ors. .. Respondents

Mr. V.S. Pandey i/b Mr. S.U. Pandey for the Petitioner.
Mr. P.S. Dani, Sr. Advocate i/b Mr. Girish Paryani for the Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 06 AUGUST 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges the orders dated 28 August 2012 and 24 March 2014 by which the petitioner has been directed to hand over vacant and peaceful possession and also to pay the respondent No.1 an amount of Rs.6,48,000/- and certain further amounts.

3] Mr. Pandey, learned counsel for the petitioner submitted that on 20 March 2012, i.e., the date for filing of written submissions, the petitioner's daughter and constituted attorney was present before the Competent Authority and requested that the

matter be kept back as her advocate was held up in traffic jam and was arriving with the written submissions. Mr. Pandey handed in certified copy of the application dated 20 March 2012, by which a prayer was made for setting aside the *ex-parte* order dated 20 March 2012 and for taking the written submissions on record. Mr. Pandey submitted that the cause shown was absolutely genuine and the impugned orders violate the principle of natural justice and fair play.

4] Mr. Dani, learned senior counsel for the respondent No.1, contended that the incident of 20 March 2012 was not an isolated one. In the past, on atleast six dates, opportunity was granted to the petitioner to file written submissions, but the petitioner failed to file the same and unduly protracted the proceedings. Therefore, upon cumulative considerations of all such factors, no further indulgence can be granted to the petitioner. Mr.Dani also pointed out that for a considerable period of time, the petitioner has not paid any amount towards the occupation of the suit premises, though the petitioner continues in occupation of the same. For all these reasons, Mr. Dani submitted that the extraordinary and equitable jurisdiction under Article 227 of the

Constitution of India ought not to be exercised in favour of the petitioner.

5] Upon hearing learned counsel for the parties and perusing the record, although several opportunities may have been granted to the petitioner in the past, in the context of the date fixed on 20 March 2012, yet another opportunity deserves to be granted to the petitioner, subject to certain conditions. The record does indicate that the petitioner was granted opportunities for filing written submissions on 5 September 2011, 5 October 2011, 24 November 2011, 10 January 2012, 21 February 2012 and 20 March 2012. However, there is no dispute that on 20 March 2012, the daughter of the petitioner was present in the Court and applied for the matter to be kept back on the ground that her advocate, who was carrying the written submissions, was held up in traffic jam. The learned counsel for the petitioner has produced certified copy of the application made on the same date, i.e., on 20 March 2012 seeking set aside of the *ex-parte* order and for leave to take on record the written submissions. In these circumstances, subject to the payment of costs, the Competent Authority could have as well

accepted the written submissions and proceeded with the matter. At least, the cause shown on 20 March 2012 deserved acceptance.

6] No doubt, prejudice is bound to occasion the respondent No.1, particularly since the respondent No.1 complains the petitioner continues in occupation of the suit premises and is not paying any such compensation towards such occupation. Accordingly, the impugned orders can be set aside, subject to certain conditions to be complied with by the petitioner. The impugned order dated 28 August 2012 directs the payment of Rs.6,48,000/- and certain further amount. This was an order made on 28 August 2012. Accordingly, the impugned orders can be set aside by directing the petitioner to deposit total amount of Rs.7,50,000/- as and by way of a pre-condition. Further, in the facts and circumstances of the present case, it would be appropriate if the respondent No.1 is permitted to withdraw an amount of Rs.3,75,000/- without prejudice and subject to necessary undertaking to bring back the said amount if and when directed by the Competent Authority. Besides, considering that the proceedings were instituted by the respondent No.1 in the year 2010, it is only proper that the same are

ordered to be expedited, consequent upon setting aside of the impugned orders.

7] Accordingly, this petition is disposed of with the following order:

(a) In addition to amount of Rs.1,50,000/- already deposited by the petitioner before the Revisional Authority, the petitioner is directed to deposit before the Competent Authority, a sum of Rs.6,00,000/- on or before 5 October 2015;

(b) In case the amount of Rs.6,00,000/- as aforesaid is deposited by the petitioner on or before 5 October 2015, the impugned orders dated 28 August 2012 and 24 March 2014 shall stand set aside;

(c) The petitioner agrees and undertakes not to seek any extension of time for deposit of the amount of Rs.6,00,000/- as aforesaid;

(d) The parties to appear before the Competent Authority on 5 October 2015 at 11.00 a.m.. If by that date, the amount of Rs.6,00,000/- is deposited by the petitioner and the impugned orders stand set aside, then the Competent Authority to dispose of the proceedings instituted by the respondent No.1 as expeditiously as possible and in any case within a period of six months from 5 October 2015;

(e) There shall be restraint upon eviction in pursuance of the impugned orders until 5 October 2015. If by 5 October 2015, the petitioner deposits the amount of Rs.6,00,000/- before the Competent Authority, then the impugned orders shall stand set aside;

(f) The respondent No.1 shall be at liberty to withdraw the amount of Rs.1,50,000/- deposited by the petitioner before the Revisional Authority in Appeal/Desk/MRCA/507/12 forthwith and unconditionally;

(g) If and when the petitioner deposits amount of Rs.6,00,000/- as aforesaid with the Competent Authority, the

respondent No.1 shall be entitled to withdraw further amount of Rs.2,25,000/-;

(h) At the time of withdrawal of Rs.2,25,000/- as aforesaid, however, the respondent No.1 to file an undertaking to the Competent Authority that the amount of Rs.3,75,000/- so withdrawn shall abide by any final order that may be made in the proceedings instituted by the respondent No.1 before the Competent Authority that the respondent No.1 shall bring back said amount if and when directed by the Competent Authority;

(i) Both parties to cooperate with the Competent Authority in the matter of expeditious disposal of such proceedings.

8] Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs.

9] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)