

Sequeira

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

WRIT PETITION Stamp NO. 22177 OF 2014.

Savitri Dubey (Sr.Citizen)

.. Petitioner

Vs.

Competent Authority,
Rent Act, Konkan Division,
Mumbai & anr.

.. Respondents

Mr.A.P.Wachasundar a/w Mr.Navin Lund, for the Petitioner.

Mr.A.R.Metkari, Assistant Government Pleader, for Respondent No.1.

Mr.Malcolm Sigawporia i/b Hariani & Co., for Respondent No.2.

CORAM: N.M.Jamdar, J.

Wednesday 15 April, 2015

Oral Order :

By this petition, the Petitioner challenges the orders dated 21 January 2014 and 5 August 2014, passed by the Competent Authority established under the Maharashtra Rent Control Act, 2005.

2 The Petitioner instituted eviction proceedings under Section 24 of the Maharashtra Rent Control Act 2005, in respect of residential apartment, Flat No.5, Shivsagar, 19, Worli Seaface, Mumbai, against the Respondent No.2. It is the case of the Petitioner that she is the owner of the premises. She had given license to the Respondent No.2 for a period of five years under leave and license Agreement dated 21 April 2001. Thereafter a

notice of termination was issued on 1 March 2005. It is a case of the Petitioner that Respondent No.2 did not hand over the possession inspite of termination of the license hence, the Petitioner was required to file the proceedings for eviction before the Competent Authority.

3 The Competent Authority by order dated 16 July 2005 rejected the application filed by the Respondent No.2 for leave to defend. On the same date, the Competent Authority passed an order of eviction of the Respondent No.2. Thereafter the Respondent No.2 filed a revision application under Section 44 of the Act, to the Additional Commissioner, Konkan Division, Mumbai and the Revision Application was dismissed on 28 September 2005. Thereafter the Respondent No.2 filed a Writ Petition No.7380 of 2005 in this Court. The learned Single Judge, after considering the rival contentions disposed of the Writ petition by order dated 30 January 2013, by observing as under -

“9). Mr. Wachasundar, the learned Counsel for the respondent, has submitted with some vehemence that the present petition is not maintainable because the petitioner is not entitled to claim protection under the Maharashtra Rent Control Act. He submits that the petitioner being a government company within the meaning of Section 617 of the Companies Act, 1956, is a public sector undertaking, as defined therein and therefore is capable of making payment of rent as per market rates and thus not entitled to claim protection under the Maharashtra Rent Control Act. In this connection, he relies upon the decision of the Apex Court in the case of Leelabai Gajanan Pansare V/s. Oriental Insurance Co. Ltd reported in (2008) 9 SCC

page 720. The submission advanced is selfdestructive. The respondent herself has resorted to the provision of Section 24 of the Maharashtra Rent Control Act for evicting the petitioner. If the contention advanced is accepted, the respondent's application for eviction under Section 24 before the Competent Authority, would also not be maintainable. Be that as it may, this question will have to be left for consideration by the Competent Court, if raised before him.

10). In all the above circumstances, the rule is made absolute. The petition is allowed in terms of prayer clause (b). The impugned orders are set aside. The application dated 5th May, 2005 for leave to defend by the petitioner. is allowed and the matter is remanded to the Competent Authority under the Maharashtra Rent Control Act, Konkan Division, Mumbai for trial and decision.”

The learned Single Judge therefore, set aside the orders of eviction as well as order refusing leave to defend and granted the application for leave to defend and remanded the proceedings back to the Competent Authority to be decided on merits.

4 Thereafter the Petitioner filed Letters Patent Appeal No.82 of 2013. The Appellate Bench noted that the learned Single Judge had not expressed any opinion on merits and that the Competent Authority will pass appropriate orders in accordance with law. Accordingly, keeping all points open, disposed of the appeal by order dated 8 April 2013. Considering the age of the Petitioner, the Appellate Bench directed the Competent Authority to dispose of the proceedings within six months. Thereafter Petitioner filed a Review Application No.2 of 2013 before the Appellate Bench, which was

not entertained and the order passed was maintained.

5 Instead of proceeding on merits, on 30 July 2013, the Petitioner filed an application for dismissal for grant of leave by the Competent Authority. According to the Petitioner, since the Respondent No.2 is a corporate entity, was not entitled to the protection under the Maharashtra Rent Control Act. The Competent Authority by order dated 21 January 2014, rejected the application. The Competent Authority held that in view of the orders passed by the learned Single Judge and the Appellate Bench of this Court, the application cannot be entertained as leave to defend has already been granted. The Petitioner thereafter filed an application for review of the order dated 21 January 2014, which was rejected on 5 August 2014. The Petitioner has challenged these two orders.

6 The learned counsel for the Petitioner, Mr.Wachasundar, submitted that the position of law has undergone a change during the pendency of the proceedings and the protection under Rent Act, is no longer applicable to the Respondent No.2 and therefore, the decision to grant of leave to defend, ought to have been reviewed by the Competent Authority. He submitted that the Competent Authority has proceeded on erroneous footing that this Court has already granted leave to defend. He submitted that the issue as to whether the Rent Act is applicable or not should be considered first and then only leave to defend needs to be granted.

7 This submission cannot be accepted. As far as parties are concerned, question of grant of leave to defend has become final by orders of the learned Single Judge and the Appellate Bench. The object of introduction of stage of grant of leave to defend is to filter out unmeritorious defences. Once learned Single Judge granted leave to defend which was confirmed by the Appellate Bench, it cannot be that because the new question of law is being urged, that the Competent Authority will be entitled to review the order. In fact review of the order to grant leave to defend by the Competent Authority will amount to review of the order passed by this Court, which the Competent Authority has rightly rejected. By granting leave to defend what the Competent Authority has done is to give an opportunity to the Respondent No.2 to put forth his case. Considering the nature of the power to be exercised while granting leave to defend, the Competent Authority could not have reviewed the order when the leave to defend was granted by this Court. As regards the contention of Mr.Wachasundar that the protection under Rent Act is not applicable to the Respondent No.2, it is not considered or concluded by any Court on merits as on date. The Competent Authority will therefore have to consider these contentions on merits. The Appeal Bench has already kept all points open to be agitated.

8 The Appeal Bench, considering that the Petitioner is aged 80 years directed the Competent Authority to decide the matter by 31

July 2013. Had the Petitioner not made applications for review, the proceedings would have been decided on merits by now. If it is the anxiety of the Petitioner that the proceedings are disposed of early, the Petitioner is not helping her own cause by filing needless applications and review. The Petition cannot be entertained. It is rejected.

9 However, by way of indulgence the Competent Authority is directed to decide the proceedings within period of six months from today, as it was already indicated by the Appeal Bench. This is provided that the Petitioner co-operates with the Appeal Bench. All contentions of the parties as regards merits and applicability of the Act are kept open.

(N.M.Jamdar, J.)