

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8186 OF 2014

Smt. Pushpa Udham Thakur (Deceased)
(Through their legal Heirs -)

1. Ms. Romilla Udham Thakur
Aged- 73 Years,
Occupation – Freelance.
2. Deepak Udham Thakur
Aged- 71 Years,
Occupation – Nil.
3. Ramesh Udham Thakur
Aged- 68 Years,
Occupation – Retainership.
Nos.1 to 4 all R/o.
No.2434, General Thimayya Road,
(Formerly known as East Street),
Pune – 411 001.
4. Mrs. Manju Vinay Pai
Aged- 55 Years,
Occupation – Business.
R/o. 1089, Hare Krishna Mandir Road,
Pune – 411 016.

...Petitioners

vs.

1. M/s. Jani Estate Developers
Private Limited
(A Private Limited Company
registered under the Indian
Companies Act,1956)
Office at C/o. Shri Mushtaq Zakaria

Arab, Shop No.4, Bungalow No.4
General Thimayya Road, Pune- 411 001.
(Through its Managing Director
Shri Mushtaq Zakaria Arab)

2. M/s. Modern Traders (Chinese Room)
(A Partnership Firm registered under
the Indian Partnership Act)
Having its place of business at
2434, General Thimayya Road,
Pune – 411 001.
(By its partner Vijay Kapoor)
3. Harish Kumar Kiratram Vij (Deceased)
(Through their legal heirs)
- 3a. Smt. Harshi Harish Vij
Aged- 82 Years,
Occupation – Housewife.
- 3b. Aman Harish Vij
Aged- 57 Years,
Occupation – Business.
Both R/o. No.6 -E/211/2,
Kalyani Nagar, Pune- 411 040.
- 3c. Sou. Payal Manoj Kashimri
Aged- 60 Years,
Occupation – Housewife.
R/o. No.3, Mark Homes,
Road No.5, Nilanjali Society,
Kalyani Nagar, Pune- 411 014.
- 3d. Sou. Pooja Puneet Khanna
Aged- 52 Years,
Occupation – Housewife.
R/o. Unit 3-C Vivek,
Opp. Khalsa College,
Next to Riviera Apartments,
45, Mall Road, Delhi.

4. Vijay Kapur
Aged- 59 Years,
Occupation – Business.
R/o. Gold Field Enclave,
South Main Road, Koregaon Park,
Pune- 411 001.

...Respondents

Mr. Mandar Limaye, for Petitioners.
Ms. Shireen Merchant i/b. Mr. Hitesh Vyas, for
Respondent No.1.
Mr. Abhishek Pungliya, for Respondent Nos. 2,
3(a) to 3(d) and 4.

CORAM : K.R. SHRIRAM, J.

DATE : 16th FEBRUARY, 2015

ORDER

The petition is rejected for reasons recorded separately with cost in the sum of Rs. 10,000/- to be paid by the petitioner to advocate for Respondent No. 1 within four weeks.

REASONS

. The petitioners had filed a suit bearing No. 1520 of 1996 against respondent Nos. 2, 3a, 3b, 3c, 3d and 4 for eviction (said suit). The petitioners are the original tenants of the suit premises. Respondent No. 1 is the landlord.

2. The said suit filed by the petitioners against respondent Nos. 2 to 4 is on the ground that the petitioners had entered into conducting arrangement with the respondent Nos. 2 to 4 and respondent Nos. 2 to 4 had committed breach of the said conducting arrangement. The breach primarily in that respondent Nos. 2 to 4 carried out permanent alternations to the suit premises and those alterations were fatal to the interest of the petitioners. The petitioners' apprehension was, by virtue of such alternations, the petitioners were at the risk of being evicted from the suit premises by respondent No. 1 under the provisions of Rent Act. The respondent No. 1 – landlord, it is necessary to note, is not a party to the said suit.

3. The respondent No. 1 filed an independent suit bearing No. 1735 of 1999 against the petitioners for eviction on various grounds including non-user, carrying out additions and

alternations of permanent nature etc. Both the suits were clubbed and tried together. In the said suit instituted by the petitioners, the petitioners took out an application to implead respondent No. 1 herein, which application got rejected. Against the said order, the petitioners filed a writ petition No. 9985 of 2009 and on the application of the petitioners, by an order dated 19th November, 2010 further proceedings of the petitioner's said suit No. 1520 of 1996 came to be stayed. In fact, while passing the said order, this Court has observed as under :-

"I was not inclined to grant interim relief, however counsel for the petitioner insists for grant of interim relief by way of stay of the suit. Since the petitioners are praying for stay of their own suit which may act to their own detriment, interim relief in terms of prayer clause (b)".

The petitioner's said suit therefore got stayed.

4. The petitioners thereafter filed an application dated 12th March, 2014 (almost 4 years later) seeking stay of the suit bearing No. 1520 of 1996 filed by respondent No.1 - landlord against the petitioners - tenant. It was the case of the petitioners that the success of the petitioners in suit No. 1735 of 1999 would be depending upon the success of the petitioners in the first suit No. 1520 of 1996. According to the petitioners, the issues in both the suits are directly and substantially one and the same.

5. Respondent No. 1 had opposed the application. The trial Court after considering the application, reply and the arguments of the counsels, rejected the petitioners application for staying of suit No. 1735 of 1999. Against that order the petitioners have approached this Court.

6. Mr. Mandar Limaye for the petitioners submitted that one of the ground for eviction filed

by respondent No. 1 is unauthorized construction of permanent nature. He submitted that it is one of the ground that the petitioners have raised in the earlier suit No. 1520 of 1996. He submitted that in view of the similarity in the grounds of eviction in both the suits, the suit No. 1520 of 1996 which was filed earlier has to be decided first and thereafter the suit No. 1735 of 1999 has to be stayed.

7. The counsel for respondent Nos. 2 to 4 supported the application of the petitioners. Naturally, because, then they will be able to continued to enjoy the property, because the suit against them namely suit No. 1520 of 1996, curiously on the application of the petitioners who were the plaintiffs in the suit, has got stayed and therefore they can continue without fear of eviction for years without paying anything except contracted rate, until their petition pending in this High Court is decided.

8. The counsel for respondent No. 1 submitted that both the suits are not similar. The grounds of subletting and non user taken in suit No. 1735 of 1999 filed by respondent No.1 against petitioners does not find any place in the said suit No. 1520 of 1996. The counsel submitted and very correctly so that the application before the trial Court and the present writ petition is filed only to prolong suit No. 1735 of 1999 filed by respondent No.1 and prayed that this petition be rejected.

9. I have perused the record and also considered the submissions made by the counsels. Respondent No. 1 who is the plaintiff in suit No. 1735 of 1999 is not a party to said suit No. 1520 of 1996. In fact, the application of the petitioner to implead respondent No.1 in that suit was also rejected by this Court in civil application No. 273 of 2012 in writ petition No. 9985 of 2009 on the ground that the suit between the petitioners, and

the person called as subtenant can be resolved without the presence of the landlord.

10. There is one common ground for eviction in both the suits, i.e. illegal construction, additions and alternations in the nature of suit property of permanent nature. In suit No. 1735 of 1999, respondent No.1 (plaintiff) has also taken ground, *inter alia*, for subletting and non-user of the suit premises which does not find place in said suit No. 1520 of 1996. In fact, the suit filed by the petitioners, i.e., suit No. 1520 of 1996 is on the ground that the premises was given to respondent Nos. 2 to 4 for conducting hotel business. Therefore the issues involved in both the suits are quite different. In fact, whether alterations and modifications of permanent nature has been carried out to the suit property will not be an issue in suit filed by respondent No.1 – landlord against the petitioners – tenant because

admittedly by the petitioners, there has been alterations and modifications of permanent nature which is the basis of the petitioner's said suit.

11. The petitioner's counsel tried to argue that the alternations were not carried by them but by respondent Nos. 2 to 4. In my view, that does not help the petitioners at all.

12. The petitioners on their own application, have got their said suit i.e. suit No. 1520 of 1996 stayed. In fact, as mentioned above, this Court in its order at 19th November, 2010, has even observed that the petitioners are praying for staying of their own suit which may act to their own detriment. Even during hearing of this petition, the petitioners were given an option to agree to vacate the stay in their said suit so that both the suits can proceed together. The petitioners' counsel did not agree. Therefore, it is quite obvious that petitioners want to stall the progress

of suit No. 1735 of 1999 filed by respondent No.1 – landlord against petitioner – tenant.

13. Since November, 2010 the petitioners suit has been stayed. The suit No. 1735 of 1999 has been pending for almost 16 years. Staying that suit until the petitioner's petition bearing No. 9985 of 2009 is disposed of would cause grave injustice to respondent No.1 particularly when they are not even party to the petitioner's suit No. 1520 of 1996 and when issues in both the suits are also not similar.

14. In the circumstances, in my view I find no perversity in the order passed by the trial Court.

15. The jurisdiction exercised under Article 227 is supervisory in nature. It is exercised when the subordinate Court has assumed the jurisdiction which it did not have or has failed to exercise the jurisdiction though available, in a manner not permitted by law, and failure of justice or grave

injustice has occasioned thereby. The Court also step in and exercise its supervisory jurisdiction if there is an error which is manifest and apparent on the face of the proceedings and grave injustice or gross failure of justice has occasioned thereby. This Court will not go into the merits and findings in the petitions filed under Article 227 of the Constitution of India. The function of High Court under Article 227 of the Constitution is limited to see that subordinate Court or Tribunal functions within its limit or authority and not to see whether the order passed by the Trial Court or Tribunal was the correct order or not.

16. In the circumstances, the petition is rejected with cost as mentioned above. The cost to be paid by the petitioners to advocate for respondent No.1 within four weeks.

(K.R. SHRIRAM, J.)