

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

WRIT PETITION NO. 182 OF 2015

1. Kamal Jagannath Chavan
1st floor, Prashant Nivas,
Near Kamal Apts., Mahim Road,
Taluka & Dist. Palghar.

2. Nitant Jagganath Chavan,
1st and 2nd floor, Kamal Apartments,
Mahim Road, Tal. & Dist. Palghar

... Petitioners

v/s

1. Babajaan Malik Sheikh
2. Rafique Babajaan Sheikh
Both residing in Flat No.1,
Ground floor, Kamal Apartments,
Mahim Road, Tal. & Dist. Palghar.

... Respondents

Ms.Neeta Karnik along with Ms.Nisha Agarwal for the petitioners.

Mr.J.A. Udaipuri i/by Udaipuri & Co. for respondent Nos.1 and 2.

CORAM: N. M. JAMDAR, J.

DATED : 6TH MAY, 2015

ORAL JUDGMENT:

The petition which is admitted, is placed on board today for hearing as to interim relief, however, by consent of parties taken up for final disposal.

2 By this petition, the petitioners challenge the order passed by the learned District Judge, Palghar, dated 20 December 2014, allowing the revision application filed by the respondents and

holding that the respondent No.1 is entitled to get independent electricity supply and for that purpose respondent No.1 will be entitled to apply to the electricity company.

3 The respondents filed Regular Civil Suit No.136 of 2014 seeking declaration of tenancy in the Court of Civil Judge, Palghar. The respondent No.1 is the father of the respondent No.2. According to the respondent Nos.1 and 2, they are staying in the suit premises which were given on tenancy basis by the petitioner No.1. According to the respondents, the premises are not kept in good condition and the petitioners are pressurizing the respondents to vacate the premises. According to the respondents, therefore, it was necessary to seek a declaration that they are the tenants of the premises and that the petitioners be restrained by an order of injunction from disturbing their possession. Respondent also took out an application for temporary injunction. In the suit, the respondents filed their written statement as well as reply. The petitioners contested the claim of the respondents and contended that the respondents are not the tenants of the premises. The other contentions raised in the plaint were denied.

4 In the suit, the respondents took out an application under Section 29 of the Maharashtra Rent Control Act, 1999. It was contended by the respondents in the said application that, as a counter-blast to the filing of the suit, the petitioners have disconnected the electricity supply and the same should be restored. The respondents also lodged a First Information Report. This application was opposed by the petitioners. It was their

contention that the application for discontinuance of the electricity supply was made by the son of the petitioner No.1 and the relationship between the son of the petitioner No.1 and the petitioner No.1 is not good. It was also stated that since the respondents are not the tenants, there is no question of restoration of electricity supply in their favour.

5 The learned Trial Judge considered the application filed by the respondents. The learned Judge came to the conclusion that the electricity supply was discontinued on the application of the son of the petitioner No.1 who is not a party in this proceeding and there is nothing shown that it is the petitioners who have discontinued the electricity supply. The learned Judge also held that since the respondents failed to prove that the petitioners were instrumental in discontinuing the electricity supply, no relief can be granted to the respondents. Accordingly, by an order dated 15 November 2014 the application filed by the respondents was rejected.

6 The respondents thereafter filed a revision application bearing No.2 of 2014 in the District Court, Thane. The learned District Judge held that without electricity supply, it will be difficult for the respondents to stay in the premises and balance of convenience was in favour of the respondents. The learned District Judge also held that, in view of the decision of this Court in the case of *Hansa Bhaskar Dave & anr. v/s Harihar Himmatlal Mehta*¹ prima facie case was made out by the respondents.

1 (2012) 1 Mh.L.J.730 (Bom.H.C.)

Accordingly, by an order dated 20 December 2014 the revision application was allowed and it was held that the respondent No.1 will be entitled to get the entire electricity supply and for that purpose it will be open to the respondent No.1 to apply to the concerned electricity supply company. Hence this petition.

7 The petition came up before the learned Vacation Judge who admitted the same on 31 December 2014 and granted ad-interim relief staying the direction of the District Court.

8 The learned counsel for the petitioners submitted that it is not possible that the respondents are staying in the premises without electricity supply for more 4 to 5 months. She submitted that the respondents have acquired premises elsewhere and they are merely occupying the present premises for oblique consideration. She submitted that the person on whose application the electricity supply is being cut-off, has not been made a party and the application filed by the respondent No.2 was not maintainable in law since the respondent No.2 is not a tenant. Learned counsel for the respondents on the other hand relied upon the decision of the learned Single Judge of this Court in the case of ***Hansa Bhaskar Dave & anr.*** (supra).

9 The suit filed by the respondents for declaration of tenancy is pending. There are no proceedings taken out by the petitioners for eviction. There is no order directing the eviction of the respondents. There is no finding of either of the Courts that the

respondents have ceased to occupy the premises. Therefore, the respondents to occupying the premises. That being the position, the electricity supply would then be one of the basic necessity.

10 The arguments which are advanced by the learned counsel for the petitioners are mostly technical in nature. The first argument that the person on whose behalf the electricity supply is cut-off is not made a party and it was not at the instance of the petitioners that the electricity supply was cut off. This argument cannot be accepted as the person who has stated to have applied to cut off the electricity supply is no other than the son of the petitioner No.1. Though it is stated that the relations between the son of the petitioner No.1 and petitioner No.1 are not good, *prima facie*, it appears that it is just a ground advanced to avoid directions under Section 29 of the Act. As far as the second contention that the application filed by the respondent No.2 is not maintainable, again the relationship of the parties need to be considered. Petitioner Nos.1 and 2 are father and son. Learned counsel for the respondents has pointed out that the application bears the signature of both the respondents, it is only supporting the affidavit which is affirmed by the respondent No.2. Therefore, this contention of the petitioners has no merit.

11 Even assuming there is a technical lacuna in the application, the question is whether in supervisory jurisdiction such equitable order should be set aside. It is well settled that, this jurisdiction is not to be exercised for correcting every error unless there is failure of justice. I find no failure of justice in the impugned order. In fact

it subserves the ends of justice.

12 The petitioners cannot be permitted to employ coercive methods for eviction without filing any proceedings for eviction. In any case, the rights of the petitioners can always be protected by clarifying that even if the respondents act upon the order passed by the learned District Judge, the same shall be subject to the final orders in the suit and it will be open to the learned Judge deciding the suit to pass appropriate order of removal of the meter if the respondents fail in their challenge. Having adequately protected the right of the petitioners in this manner, I do not feel that any interference is warranted in the order which permits the respondents to have electricity connection pending the suit filed by them. The writ petition cannot therefore be entertained and is dismissed. Rule discharged.

13 The learned counsel for the petitioner seeks continuation of the ad-interim relief. I do not find any case for continuance of ad-interim relief. In view of the onset of summer and monsoon, electricity supply is an immediately necessity. In any case, I have already granted adequate protection to the petitioners by way of the clarification. Therefore, the request is refused.

(N. M. JAMDAR, J.)