

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 8512 OF 2015

MR. NARAYAN GANPAT JADHAV
AND ORS.

...Petitioners

Versus

MR. SHANKAR KRISHNA GAIKWAD
AND ORS.

...Respondents

....

Mr.Nitesh S. Nevshe, Advocate for the Petitioners.

Mr. Ravindra R. Chile, Advocate for Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 17th MARCH, 2016

P.C.

1. Heard Mr.Nitesh Nevshe, learned Counsel for the petitioners and Mr. Ravindra Chile, learned Counsel for the respondents, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have *inter alia* prayed for (1) quashing Execution Application No.59/2012 filed by the respondents, hereinafter referred to as 'decree holders' against the petitioners hereinafter referred to 'judgment debtors' in the Court of Civil Judge, Junior Division, Vadgaon Maval, (2) for passing ad-interim relief in the execution proceedings against the decree holders till the final hearing of the petition and (3) for directing

learned trial Judge to dispose of the Review Petition filed by the petitioner along with condonation of delay application No.24/2015 in R.C.S. No.94/1998.

3. Decree holders had instituted Regular Civil Suit No.94/1998 for recovery of possession under the provisions of Section 13(1)(b) and 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') against the 'judgment debtors'. The suit was decreed by the trial Court on 10.1.2008. Civil Appeal preferred by the judgment debtors was dismissed by learned District Judge on 25.7.2012. Aggrieved by these decisions, the judgment debtors instituted Civil Revision Application [St.] No.4792/2013 in this Court. C.R.A. was heard on 11.12.2013. Judgment debtor No.6 Ms. Asha Chindu Gaikwad was present in the Court at the time of hearing of that Civil Revision Application. Upon taking instructions from her, Advocate for the judgment debtors did not press Civil Revision Application subject to giving reasonably long time for vacating the suit premises. Advocate appearing for the decree holders expressed readiness and willingness to give time upto and inclusive of 31.3.2015 for vacating the suit premises

subject to judgment debtors giving usual undertaking in this Court. Civil Revision Application was disposed of on 11.12.2013 as not pressed subject to the judgment debtors giving undertaking in terms set out in that order. Clause (vi) thereof, required judgment debtors to hand over vacant and peaceful possession of the suit premises on or before 31.3.2015.

4. In pursuance thereof, the judgment debtors gave undertaking on 31.12.2013. In clause (f), they undertook to this Court that they will hand over vacant and peaceful possession of the suit premises to the decree holders on or before 31.3.2015.

5. In January, 2015, the Judgment debtors took out Civil Application No.174/2015 for cancellation/withdrawal of the undertaking given by them for vacating the suit premises. By order dated 30.4.2015, the matter was adjourned to 15.6.2015 as the application for adjournment was made on behalf of the judgment debtors. While adjourning the matter to 15.6.2015, this Court clarified that there was no interim relief operating in said Civil Application. Civil Application was thereafter heard on 15.6.2015. By order dated 15.6.2015, Civil Application was dismissed and as the learned Counsel for the judgment debtors

submitted there were some health issues concerning the judgment debtors, this Court refrained from imposition of any costs, which otherwise the Court would have been inclined to impose upon the judgment debtors.

6. Instead of vacating the suit premises and handing over possession thereof to decree holders on or before 31.3.2015, the judgment debtors have instituted the present petition for quashing execution proceedings. Mr. Nevshe submitted that the decree holders have encroached upon the property belonging to Lonavala Municipal Council and carried out unauthorized construction wherein judgment debtors were inducted. He submitted that the suit premises are not governed by the provisions of the Act. In short, he submitted that the decree passed by the trial Court, which is affirmed till this Court, is nullity and the decree is inexecutable. Upon query from the Court, Mr. Nevshe fairly submitted that this plea was never raised in trial Court, in District Court or even in this Court. Even otherwise, it is not possible to accept this submission. The Courts below had decreed the suit on grounds available under Section 13(1)(b) and 13(1)(g) of the Act. Civil Revision

Application filed by the judgment debtors was disposed of as not pressed on 11.12.2013. The judgment debtors were given time upto and inclusive of 31.3.2015. It is only after enjoying the benefits under the order dated 11.12.2013, the judgment debtors took out an application in January, 2015 for cancelling/withdrawing the undertaking. In the order dated 30.4.2015, this Court noted that the application was moved only three days before the time granted by this Court was to expire. On the face of it, such an application cannot be considered. As noted earlier, that application was also rejected. In my opinion, the judgment debtors are really in contempt for not complying the order passed by this Court despite giving undertaking.

7. As I am inclined to dismiss this Writ Petition, I refrain from initiating contempt proceedings against the judgment debtors, as while dismissing Civil Application this Court has noted that there were some health issues concerning the judgment debtors. In the light of this, the petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)