

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition No.10011 OF 2016**

Mrs. Anupama Bharat Deshpande

...Petitioner

*Versus*

Mr. Raosaheb Mohanlal Chimanlal  
and Others.

...Respondents

....

Mr.Parag V. Dube, Advocate for the Petitioner.

Mr.Rahul Totala i/b. Abhineet Panga, for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 08<sup>th</sup> SEPTEMBER, 2016

P.C.

1. Not on board. At the request of Mr.Dube taken up for admission.
2. Heard, Mr.Parag Dube, learned Counsel for the petitioner and Mr. Rahul Totala, learned Counsel for the respondents, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and decree dated 14.7.2016 passed by the learned District Judge-16, Pune in Civil Appeal No.474/2013. By that order, the learned District Judge dismissed the appeal preferred by the petitioner challenging exparte judgment and decree dated 15.12.2004 passed by the learned 2<sup>nd</sup> Additional Judge, Small Causes Court, Pune in Civil Suit No.542/2002. The learned trial Judge directed defendant

No.1 M/s. Suresh and Company, a proprietary concern and defendant No.2 Shri Narendra Kale, hereinafter referred to as original defendants to hand over vacant and peaceful possession of the block admeasuring 1893.76 sq. ft. situate on the first floor in the building standing on Final Plot No.1, CTS No.1693, Bhamburda Shivajinagar, Agricultural College Chowk, Pune – 411 005 (for short, 'suit premises') to the respondents, hereinafter referred to as the plaintiffs.

4. In support of this petition, Mr. Dube strenuously contended that the plaintiffs had instituted Civil Suit No.104/2000 against M/s. Suresh & Co.. They represented that defendant No.2 Narendra Kale was the proprietor of defendant No.1. Perusal of that plaint shows that summons and notice on defendants No. 1 and 2 were to be served on Mr. Bharat Deshpande, husband of the present petitioner. Civil Suit No.104/2000 was instituted only for perpetual injunction restraining the defendants therein from damaging and causing any changes and doing any civil work in the suit premises and/or any part thereof and also from dumping the material in the suit premises.

5. The plaintiffs instituted Civil Suit No.542/2002 once again against defendant No.1 M/s. Suresh and Company and defendant No.2 Narendra Kale. Even in that suit, defendant No.2 was sued in his capacity as proprietor of defendant No.1 M/s. Suresh and Company. He submitted

that the plaintiffs did not implead Harihar Kale, proprietor of defendant No.1 M/s. Suresh and Company. Suit was decreed ex parte on 15.12.2004. The plaintiffs thereafter tried to execute the decree by filing darkhast. On 15.3.2015, the petitioner filed application Exhibit-14 under Order XXI Rule 97 of C.P.C. By order dated 17.10.2005, learned trial Judge rejected the application. He submitted that in paragraph-12 of that order, learned trial Judge specifically recorded that "It is an undisputed fact that Harihar Kale was Proprietor of Suresh and Company."

6. Aggrieved by order dated 17.10.2005 below Exhibit-14, the petitioner filed Civil Appeal, which was dismissed on 2.12.2011. The petitioner preferred Writ Petition No.999/2012. Petition was disposed of as withdrawn and parties were directed to maintain status quo in respect of the suit premises for a period of two weeks from the date of the order. Mr. Dube submitted that during the course of hearing of that Petition, it transpired that the petitioner herein should have filed substantive appeal challenging the judgment dated 15.12.2004. Accordingly the petitioner withdrew that petition. Petitioner thereafter filed substantive appeal under Section 96 of the Act. Since there was delay in filing the appeal, she took out application for condonation of delay. That application was rejected by the District Court. Aggrieved by that order, the petitioner instituted Writ Petition in this Court. By order dated

14.2.2013 the petition was allowed and the order dated 26.7.2012 passed by the learned District Judge in Misc. Application No.81/2006 was set aside. Delay was condoned subject to payment of costs quantified at Rs.6,000/- to be paid within two weeks. Appellate Court was directed to dispose of the appeal within a period of six months from the date of its registration. He submitted that in pursuance thereof, Appellate Court heard the appeal and dismissed it by the impugned order. It is against this decision, the petitioner has instituted the present petition.

7. He submitted that basically the decree passed in Civil Suit No.542/2002 is null and void. The petitioner's father Harihar Kale was the Proprietor of defendant No.1, M/s. Suresh and Company and also tenant of the suit premises. The plaintiffs mischievously did not implead Harihar Kale in that suit. He submitted that the findings recorded by the learned trial Judge in paragraph-12 of the order dated 17.10.2005 to the effect that it is undisputed fact that Harihar Kale was Proprietor of M/s. Suresh and Company, were not challenged by the plaintiffs. The said finding binds the plaintiffs. The Courts below committed serious error in passing the decree of eviction against original defendants. He submitted that after death of Harihar Kale, tenancy has devolved upon the petitioner under Section 7(15)(d) of the Maharashtra Rent Control Act, 1999. He submitted that the petitioner has relied upon

following documentary evidence to establish that Harihar Kale was proprietor of M/s. Suresh and Company :

- (1) Certificate of enrolment under Section 5 of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975.
- (2) Certificate dated 11.7.2015 issued by Assistant General Manager, Bank of India certifying that Mr. Harihar Kale and the petitioner maintained savings account No.051410100017530 with Bank of India since 10.10.2002. Said certificate also recorded that payment of Rs.630/- by cheque No.439416 issued in favour of Maharashtra State Electricity Board, Pune has been made.
- (3) Profit and loss account of defendant No.1 company signed by Harihar Kale as proprietor of defendant No.1 for year ending on 31.3.1995.
- (4) Invoice No.02/97-98 dated 28.12.1997 of Suresh and Company signed by Harihar Kale as proprietor of defendant No.1.
- (5) Order placed by Modular Innovators Private Limited for development of software modules to M/s. Suresh and Company, having reference No.MIPL/97-98, dated 25.11.1997.
- (6) Invoice No.01/97-98 dated 5.11.1997 issued by

Suresh and Company and signed by Harihar Kale.

- (7) Order placed by Modular Systems, bearing reference No.MS/97-98 dated 5.9.1997,
- (8) Succession certificate issued in favour of the petitioner herein to contend that the tenancy rights in respect of the suit premises standing in the name of her father Harihar Kale devolved upon her under Section 7(15)(d) of the Act. He, therefore, submitted that the Petition requires consideration.

8. On the other hand Mr. Totala supported the impugned orders. He submitted that earlier plaintiffs had instituted Civil Suit No.104/2000 against the defendants. In that suit Mr.Bharat Deshpande, husband of the petitioner herein filed say and written statement on 21.3.2000. In the entire written statement, he did not set up case that Harihar Kale was the Proprietor of defendant No.1 M/s. Suresh and Company. In fact during pendency of the suit, Harihar Kale filed application Exhibit-36 on 6.10.2000 *inter alia* contending that Haribhau Kale is the Proprietor of M/s. Suresh and Company; that Mr. Bharat Deshpande is his son-in-law; Mr. Bharat Deshpande is permanent resident of Karad and was not residing with him; Mr. Bharat Deshpande was not a party to the present

proceedings. He never executed any power of attorney in favour of Mr. Bharat Deshpande. By that application, he prayed for permission to file say to injunction application at Exhibit-5 and written statement in the matter. Mr. Totala submitted that Harihar Kale thereafter filed purshis on 18.10.2000 not pressing application Exhibit-36.

9. Mr. Totala submitted that thereafter on 17.1.2006 suit No.104/2000 was decreed. Thereafter the plaintiffs instituted present suit for recovery of possession. He submitted that in that suit notices were served on the defendants. Despite service of summons, the defendants did not appear. He has taken me through the bailiff's reports dated 2.3.2004, 4.3.2004 and 14.3.2005. He further submitted that notice was published through paper publication. However, none appeared on behalf of the defendants. Learned trial Judge decreed the suit on 15.12.2004. Mr. Totala submitted that the plaintiffs filed darkhast proceedings for execution of the decree dated 27.2.2005. During that darkhast, the petitioner filed application Exhibit-14 under Order XXI Rule 97 on 15.3.2015 which was rejected by the trial Court on 17.10.2005. Appeal preferred against that decision was dismissed on 2.12.2011. He invited my attention to paragraph-12 of that order wherein it is recorded that the petitioner was neither Proprietor of defendant No.1 nor was a tenant in respect of the suit property at any time. There is

nothing on record to show that she was in possession of the suit property. In other words, he submitted that the learned District Judge held that the petitioner has no right, title and interest in the suit premises. Aggrieved by this order, the petitioner instituted Writ Petition No.999/2012 which was withdrawn unconditionally. He further submitted that the learned District Judge considered earlier proceedings and held that the petitioner cannot be a tenant within the meaning of Section 7(15)(d) of the Act. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

10. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The short question in the present Petition is whether the petitioner has any right, title and interest in the suit premises. As noted earlier, after Civil Suit No.542/2002 was decreed on 15.12.2004, the plaintiffs took out darkhast proceedings. Pending that darkhast, the petitioner herein filed application at Exhibit-14 on 15.3.2005. In that application, all the contentions which are agitated herein were raised. By order dated 17.10.2005, the learned trial Judge rejected the application. Mr. Dube relied upon paragraph-12 of that order, which reads thus :

**“12. It is an undisputed fact that Harihar Kale was Proprietor of Suresh and Company.** CS No.542/2002 was filed during



his life time. Neither Harihar Kale, nor his son, nor the applicant, nor her husband appeared in CS No.542/2002 to get decide their right if any in the suit premises or to contest CS No.542/2002. Sufficient time was available for the applicant to appear in CS No.542/2002 since the date of publication of summons in daily newspaper on 20.2.2003. **The silence on the part of the applicant for a long period clearly indicates that she has no right or interest in the suit premises. Moreover, there is no document on record to show that the applicant was doing business in the suit premises along with her father. So I have found no substance in the contention of the applicant.** Therefore, the application deserves to be rejected.”

(emphasis supplied)

11. Perusal of this paragraph shows that even in this paragraph, the learned trial Judge clearly recorded a finding that the petitioner herein has no right, title and interest in the premises. Moreover there is no document on record to show that the petitioner was doing business in the suit premises along with her father. Application was accordingly rejected.

12. Aggrieved by that decision, the petitioner herein preferred Civil Appeal No.845/2005. While dismissing the appeal, learned District Judge observed in paragraph-12 thus :

**“12. As observed above, it is revealed that the appellant was neither the proprietor of the JD No.1-Firm nor was the tenant in respect of the suit property any time. There is nothing on record to show that she was in possession of the suit property.** She is, therefore, not entitled to obstruct decree in any manner. The case laws, therefore, relied upon on her behalf have no relevance and applicability in the instant matter. Accordingly the applicant is not entitled to execution proceeding before the learned trial Court. Accordingly, point no.1 is answered in the negative.”

(emphasis supplied)

13. The petitioner challenged that order by filing Writ Petition No.999 of 2012 which was unconditionally withdrawn. In view thereof, the findings recorded by the learned District Judge in paragraph-12 has attained finality. Even while dismissing the application on 17.10.2005 by the trial Court and while dismissing the appeal by the Appellate Court on 2.12.2011, the Courts below have concurrently held that the petitioner was neither proprietor of defendant No.1 nor was tenant in respect of the suit premises. There was nothing on record to show that she was in possession of the suit premises. It is material to note that the petitioner claimed tenancy under Section 7(15)(d) of the Act.

14. That apart, as noted earlier, though Harihar Kale

had filed application Exhibit-36 in Civil Suit No.104/2000, he did not press that application. In view thereof, I do not find that the learned District Judge committed any error in dismissing the appeal. Reliance placed by Mr. Dube on documentary evidence as referred in paragraph-7 above, does not advance the case of the petitioner as the Courts below have held that the petitioner herein has no right, title and interest in the suit premises and cannot claim tenancy under Section 7(15)(d) of the Act.

15. In the result, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

16. At this stage, Mr. Dube orally applies for stay of this order for a reasonable period so as to challenge this order before the higher Court. Mr.Totala opposes this application. He submitted that on 1.9.2016, at the stage of production, this Court refused ad-interim order. As the petition is now dismissed on merits, no case is made out for grant of any interim relief. I find merit in the submission of Mr.Totala. Hence, oral application for stay of this order is rejected.

17. All parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)