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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12735 OF 2015

Savitri Dubey (Sr. Citizen)

... Petitioner

Versus

Competent Authority, Rent Act & Anr.

... Respondents

Mr. A.P. Wachasudar for the Petitioner.

Mr. P.G. Sawant, AGP for the Respondent No.1.

Mr. Pradeep J. Thorat a/w Ms. Tanvi Kamat & Mr. Samarth Choudhary
i/by Hariani & Co. for Respondent No.2.

CORAM : A.S. OKA &
A.A. SAYED, JJ.

DATE : 22nd AUGUST, 2016

P.C.

1 Heard the learned counsel appearing for the Petitioner. This Petition under Article 226 of the Constitution of India is completely misconceived. The present Petitioner filed an application before the Competent Authority under the Maharashtra Rent Control Act, 1999 for eviction of the second Respondent. On 16th July, 2005 an order of eviction was passed by the Competent Authority. Being aggrieved by the said order, the second Respondent which was the opponent before the Competent Authority filed a Revision Application before the Divisional Commissioner under Section 44 of the Maharashtra Rent

Control Act (for short “the said Act”). The Revision Application was dismissed. Thereafter, the second Respondent filed a Writ Petition before this Court. The learned Single Judge of this Court allowed the said Writ Petition. The order of eviction was set aside and the application made by the second Respondent for grant of leave to defend was allowed and the matter was remanded to the Competent Authority. After the remand, the second Respondent filed written statement before the Competent Authority.

2 On 21st January, 2014 the Competent Authority on application made by the Petitioner observed that as this Court has granted leave to defend to the second Respondent, the application for eviction will have to be heard on merits. The Petitioner applied for review of the said order which was rejected by order dated 5th August, 2014 passed by the Competent Authority.

3 The aforesaid orders dated 21st January, 2014 and 5th August, 2014 were challenged by the present Petitioner by filing a Writ Petition in this Court. By order dated 15th April, 2015 the Writ Petition was rejected. Paragraphs 8 and 9 of the said order read thus :-

8. The Appeal Bench, considering that the Petitioner is aged 80 years directed the Competent Authority to decide the matter by 31st 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 cooperates with the Appeal Bench. All contentions of the parties as regards merits and applicability of the Act are kept open.

4 Thus, this Court noted conduct of the Petitioner of making needless applications before the Competent Authority. The direction of this Court in paragraph 9 was to the Competent Authority to decide the application for eviction within a period of six months provided the present Petitioner co-operates with the Competent Authority.

5 After the said order was passed, instead of proceeding with the matter on 15th May, 2015 the present Petitioner filed another application before the Competent Authority. By order dated 2nd December, 2015 the Competent Authority held that it has jurisdiction to entertain and decide the matter.

6 The first substantive prayer in this Petition under Article 226 of the Constitution of India is that the issue of exemption under Section 3(1) (b) of the said Act in relation to the premises in question shall be decided by this Court. Another prayer is for directing the Competent Authority to decide the pending application in accordance with law and within a period of one month. The last prayer is for directing the second Respondent to hand over possession of the premises subject matter of pending application before the Competent Authority.

7 The issue of applicability of exemption raised by prayer (a) will have to be decided by the Competent Authority in the pending application and not by this Court.

8 We have perused the affidavit of Shri Rajat Srivastava filed on behalf of the second Respondent. In paragraph 13 of the affidavit, it is stated that instead of co-operating with the Competent Authority, the Petitioner filed an application dated 26th June, 2015 before the Competent Authority for framing preliminary issue as to the applicability of the Rent Act. The said application was rejected by order dated 2nd December, 2015. According to us the present Petition is

completely misconceived. If the Petitioner wants his application for eviction to be decided early, she will have to co-operate with the Competent Authority and stop making one application after the another. The record shows that the Petitioner has not co-operated with the Competent Authority and on the contrary, by filing successive applications, has delayed the proceedings.

9 If the Petitioner wants to co-operate with the Competent Authority by proceeding with the final hearing of the application without making any further applications, the Petitioner can always invite attention of the Competent Authority to clause 9 of the order dated 15th April, 2015. We are sure that if the Petitioner co-operates with the Competent Authority, necessary priority will be given by the Competent Authority to finally decide the main application for eviction. Subject to what is observed above, no case for interference is made out. The Petition is rejected.

(A.A. SAYED, J)

(A.S. OKA, J)