

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6326 OF 2015

RAMESHCHANDRA S/O SATYANARAYAN SONI
VS
M/S BHAGWATI TRADING COMPANY AND ANOTHER
AND
WRIT PETITION NO.6327 OF 2015

RAMESHCHANDRA S/O SATYANARAYAN SONI
VS
M/S SHRIRAM FOOD PRODUCTS AND ANOTHER

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Petitioner in person.

Shri S. D. Khati, Advocate for respondent nos.1 and 2 in W.P.
No.6326/2015

Shri S. V. Bhutada, Advocate for respondent nos.1 & 2 in W.P.
No.6327/2015.

CORAM : A.S. CHANDURKAR, J.

DATED : JULY 29, 2016.

1. Since both these writ petitions raise challenge to identical orders, they are being decided by this common order.

2. The petitioner is the original plaintiff who has filed suit for recovery of possession of the property in occupation of the respondents under provisions of the Maharashtra Rent Control Act, 1999 (for short, the said Act). During pendency of the suit, an application under provisions of Section 8(4) of the said Act for fixation of standard rent came to be filed. By order dated 22-7-2015, the learned Judge of the Small Causes Court allowed the said application. The respondents filed an application below Exhibit-189 for review of the order dated 22-7-2015 and by the order dated

16-11-2015, the application for review came to be allowed. This order is under challenge in the present writ petition.

The petitioner had also filed an application below Exhibit-188 for barring the defendants from appearing and prosecuting the suit as the order dated 22-7-2015 had not been complied with. This application was rejected on 16-11-2015. Another application filed by the petitioner below Exhibit-184 seeking permission to file additional affidavit in support of the affidavit in lieu of evidence also came to be moved. This application was rejected on 16-11-2015.

3. I have heard the petitioner in person as well as Shri S. D. Khatri and Shri S. V. Bhutada, the learned Counsel for the respondents. At the outset, the learned Counsel for the respondents raised an objection to the availability of a statutory remedy for challenging the order passed below Exhibit-189 allowing the review application. It was submitted that under provisions of Order XLIII Rule 1(w) of the Code of Civil Procedure, 1908 (for short, the Code) this order could be challenged by filing an appeal before the District Court. In response thereto, it was submitted by the petitioner in person that no such appeal was maintainable in view of provisions of Sections 34 and 37 of the said Act. It was, therefore, submitted that the writ petition challenging the said order deserves to be entertained.

4. Against the order allowing the application for review, the remedy under provisions of Order XLIII Rule 1 (w) of the Code has been prescribed. Under Section 34 (1) of the said Act and proviso thereto, it is only if an appeal is not provided against any decree or order under the Code that such appeal is not maintainable under Section 34 of the said Act. In other words, if an appeal is provided under the Code for challenging any decree or order made in any suit or

proceedings, then such appeal would also be available under Section 34 of the said Act. The provisions of Section 37 do not bar filing of such appeal. Thus, the order dated 16-11-2015 passed below Exhibit-189 can be assailed by filing an appeal before the District Court. It is, therefore, not necessary to enter into the merits to challenge the said order.

5. In so far as the orders passed below Exhibit-188 is concerned, the learned Judge of the Small Causes Court has observed that as the review application was pending, said application could not be considered. As the petitioner has challenged the order allowing the review application, the same position continues. After the order passed below Section 8 (4) of the said Act attains finality, it is open for the petitioner to raise a grievance if the same is not complied with. Hence, challenge to the order below Exhibit-188 and Exhibit 166 respectively does not survive.

6. In so far as the order passed below Exhibit-184 is concerned, it is submitted by the petitioner in person that the additional affidavit was based on the subsequent assessment carried out by the Municipal Corporation. According to him, the subsequent assessment having been carried out during pendency of the suit, there was no reason to again amend the pleadings. He submitted that under Section 6 of the Evidence Act, a fact which was relevant could be brought on record.

7. The trial Court has refused permission to rely upon the additional affidavit on the ground that necessary pleadings were not there on record in that regard. This approach of the trial Court cannot be faulted with. By observing that it is open for the petitioner to first amend the pleadings and then seek to substantiate the same by filing an additional affidavit, the order passed below Exhibit-184 and Exhibit 162 respectively is maintained.

8. The writ petitions stand disposed of in the light of aforesaid observations by granting liberty to the petitioner to challenge the order passed below Exhibit-189 in R.C.S. no.79/2013 and Exhibit-163 in R.C.S. No.80/2013 in appeal if so advised. The points raised in that regard are kept open. Order accordingly.

JUDGE

/MULEY/

C E R T I F I C A T E

“ I certify that this Order uploaded is a true and correct copy of original signed Order.”

Uploaded by : Sanjay B. Muley,
Personal Assistant.

Uploaded on : 04-08-2016