

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2602 OF 1994

Radhakishan Baburao Babar
Deceased, through L.Rs.

(A) Smt. Mathurabai Radhakishan Babar
Age 60 years, Occ. Nil / Household
R/o Modikhana, Sadar Bazar, Jalna.

(B) Sanjay Radhakishan Babar
Age 42 years, Occ. Service,
R/o As above.

(C) Shyam Radhakishan Babar
Age 32 years, Occ. Service,
R/o As above.

..Petitioners

Versus

1. The District Judge, Jalna

2. Nandkishore Chhanganrao
Khardekar, age 36 years,
Occupation - Agriculture
R/o Modikhana, Sadar Bazar,
Jalna.

..Respondents

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Advocate for Petitioner : Shri A.S.Deshpande

AGP for Respondents:

Advocate for Respondent 2 : Shri H.M.Karwa

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 14, 2017

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ORAL JUDGMENT :-

1. The deceased petitioner, now appearing through his legal heirs, has challenged the judgment dated 23.10.1989, delivered

by the Rent Controller, Jalna in Eviction Case No. 84/RC/CR/5, that was instituted on 9.1.1984. The date of the judgment is wrongly mentioned in the prayer clause of this petition as 12.12.1989.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides on 29.6.2017, 13.7.2017 and today. I have perused the record and proceedings with their assistance.

3. The petitioner was the defendant in the Eviction Case instituted by the respondent under Section 15 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1964. It is not in dispute that the judgment dated 23.10.1989 is delivered ex-parte as the Court has concluded that the petitioner did not appear in the matter, despite service. It is specific contention of the petitioner in this petition and throughout before all the authorities, that he had never been served with the notice of the Rent Court.

4. In the impugned judgment, the Court has recorded that notices were issued on 24.7.1985, 19.8.1985 and 16.12.1985. The last notice was served on the petitioner on 2.1.1986. I am

not dealing with this issue in this petition since this Court does not have the jurisdiction to directly entertain a Writ Petition for challenging the judgment of the Rent Controller. The reason why this petition cannot be directly entertained as against the impugned judgment is for the following reasons:-

(a) After the judgment dated 23.10.1989 was pronounced, the petitioner moved an application in Case No. RC/84/CR-5 dated 11.12.1989, praying for setting aside the ex-parte judgment and permitting the petitioner to contest the proceedings.

(b) By order dated 12.12.1989, the Rent Controller's Court observed that the notice was served on the petitioner on 2.1.1986, signatures have been obtained and hence, the application is rejected.

(c) The petitioner then challenged the order dated 12.12.1989 by filing Rent Appeal No.24 of 1989 on 22.12.1989. Interim protection was granted on 11.6.1981 on the condition of depositing the rent regularly.

(d) On 3.6.1993, Rent Appeal No. 24 of 1989 was

dismissed in default.

(e) The petitioner then filed Misc. Civil Application on 24.2.1984 seeking restoration of the Rent Appeal. The said case papers were returned to the petitioner by the Court by making the observation as, “ *Documents be returned to the applicant (petitioner) as prayed.*”

(f) The petitioner then preferred Misc. Application No.33 of 1994 before the District Court praying for restoration of the Rent Appeal No.24 of 1989, which was dismissed in default. After the filing of this proceeding, the petitioner has filed this Writ Petition in this Court, challenging only the judgment of the Rent Controller dated 23.10.1989.

(g) In the meanwhile, by a purshis dated 9.11.1994 at Exhibit 13, the petitioner withdrew Misc. Civil Application No.33 of 1994, unconditionally, and by order dated 9.11.1994, the District Court allowed Exhibit 13 and disposed off the proceedings as withdrawn.

(h) The peculiar situation before this Court is that, on

the one hand none of the orders i.e. 12.12.1989, 3.6.1993 and 24.2.1994 have been challenged. On the other hand, the link between the petitioner and this Court being the Misc. Civil Application No.33 of 1994, filed before the District Court, Jalna, by which, the 'dismissed in default' order was sought to be set aside and the Rent Appeal No.24 of 1989 was sought to be restored, was withdrawn. This link has been detached by the petitioner himself by withdrawing MCA No. 33 of 1994 on 9.11.1993. As such, this Court cannot directly exercise its jurisdiction on the judgment of the Rent Controller dated 23.9.1989 by ignoring all the above orders.

5. Shri Deshpande, learned counsel for the petitioner has strenuously contended that the MCA No.34 of 1994 may have been withdrawn out of ignorance, on account of the anxiety suffered by the petitioner, who subsequently passed away and on being illiterate. He prays that MCA No.34 of 1994 can be restored and the petitioner can pursue the remedy before the District Court, Jalna for seeking restoration of the Rent Appeal No.24 of 1989.

6. Shri Karwa, learned counsel for respondent No.2 /

original landlord opposes the said request.

7. This Court has protected the petitioner by an order dated 12.8.1994 by granting prayer clause (D), which reads as under:-

“(D) Pending hearing and final disposal of this petition, the execution and operation of the eviction decree passed by the Rent Controller Jalna in Case No. 84/RC/CR-5, dated 23.10.1989 may kindly be stayed. ”

8. The above said interim relief has protected the deceased petitioner and consequentially his legal heirs for the past about 23 years.

9. Considering the above, this petition is disposed off by granting liberty to the legal heirs of the deceased petitioner to move an appropriate application before the learned District Judge, Jalna for seeking the recalling of the purshis Exhibit 13, dated 9.11.1994 and for restoring MCA No.33 of 1994. In the event, such an application is filed, within four weeks from today, along with an application for condonation of delay, the learned District Judge shall deal with the same in accordance with law and without being influenced by any observations of this Court.

10. Needless to state, the pendency of this petition from 11.8.1994, till its disposal today, shall be a good ground for seeking condonation of delay. Consequentially, the interim protection granted by this Court on 12.8.1994 shall continue to protect the petitioner for a further period of twelve weeks within which, the learned District Judge, Jalna would endeavour to decide and dispose off the application with regard to Exhibit 13.

11. The record and proceedings be returned to the District Judge, Jalna forthwith.

(RAVINDRA V. GHUGE, J.)

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