

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL WRIT PETITION NO.7680 OF 2016

Mr. Kedar Rameshchandra Gavankar	... Petitioner
vs.	
Mr. Hemchand R. Shah	... Respondent

Ms. Anjali N. Helekar for the Petitioner.
Mr. R.J. Thakkar i/b Mr. Paras N. Vira for the Respondent.

CORAM : N.M. Jamdar, J.

DATED : 16 February, 2017

ORAL ORDER

Heard learned Counsel for the parties. By consent of the learned Counsel, the Petition is taken up for final disposal.

2 The Respondent filed an application for issuance of summons before the Competent Authority, Konkan Division, Bandra, Mumbai on 15 October 2010. On the same date, summons was issued to Rameshchandra Govind Gavankar, the licensee returnable on 15 November 2010. The present Petitioner who is son of Rameshchandra Govind Gavankar appeared on 14 January 2011 and stated that his father was psychologically ill. The Competent Authority informed the Petitioner to make an application for appointment of a suitable person as guardian. An application was filed by the Petitioner on 21 January

2011 for appointing him as the guardian of the licensee. The Respondent contested the application and filed his say. The said application was allowed by the Competent Authority by an order dated 19 September 2011. The Respondent instead of joining the Petitioner as guardian of the licensee joined him as Respondent No.2.

3 The Petitioner made an application for dismissal of the application on the ground that amendment as directed was not carried out and the proceedings against person of unsound mind could not be pursued. The Competent Authority passed an order on 25 June 2013. Thereafter, the Petitioner filed a Revision Application before the Additional Commissioner, Konkan Division, Mumbai. The Additional Commissioner by an order dated 16 April 2014 set aside the order passed by the Competent Authority and remanded the matter. After the remand the Respondent filed an application for taking corrective steps and to show the Petitioner as guardian of the licensee. This application was rejected. A Writ Petition No.2084 of 2016 was filed by the Respondent. The learned Single Judge by an order dated 29 February 2016 permitted the Respondent to carry out the amendment within two weeks holding that it was only technical flaw. Thereafter, the Petitioner filed a Special Leave to Appeal (C) bearing No.8853 of 2016 which was disposed of by the Apex Court on 11 April 2016. The Apex Court, while not interfering with the order passed by the learned Single Judge, held

that any observations made relating to the right of the Petitioner to seek leave to defend in the impugned order will not stand in the way of the trial Court in dealing with such application as per law.

4 The Respondent carried out the amendment on 11 March 2016 and the Petitioner was shown as guardian of the original licensee. On the same date an application was filed by the Petitioner to permit to file leave to defend application. This was contested by the Respondent. By the impugned order dated 13 June 2016, the Competent Authority rejected the application filed by the Petitioner seeking permission to file leave to defend application. This order has been challenged in the present Petition.

5 I have heard the learned Counsel for the parties. The proceedings are under section 24 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as 'the Act of 1999'). They are summary proceedings. Section 43 of the Act of 1999 lays down a stipulation regarding period of limitation for filing an application seeking leave to defend. It is the contention of the learned Counsel for the Respondent that since the application was not filed within stipulated period under section 43(4)(a) of the Act of 1999, the Competent Authority has rightly rejected the application by passing the impugned order.

6 By an order dated 19 September 2011, the Respondent was directed to join the Petitioner as guardian of the licensee instead the Respondent joined the Petitioner as Respondent No.2 as a entirely different entity, why this was done, there is absolutely no explanation. Instead of taking corrective steps, on the ground whether the amendment was properly carried out or not, the Respondent litigated the litigation between the parties ultimately culminated in the order passed by the Apex Court. Therefore, it is the refusal of the Respondent to join the Petitioner as a guardian of the licensee and instead insisted on joining him as Respondent No.2, that led to prolonging of this litigation and therefore, it cannot be said that the Respondent is not at fault for the delay. If the Respondent carried out the amendment as directed in the year 2011 itself, no factum of delay would have occasioned and proceeding could have been culminated by now.

7 Finally, when the Respondent joined the Petitioner as guardian of the licensee, a right accrued to the Petitioner to represent the licensee as his guardian. Though the Petitioner was brought on record as Respondent No.2, his status was on remained as Respondent No.2 for the purpose of filing a leave to defend application.

8 The Competent Authority in the impugned order has held that the starting period of limitation was 14 January 2011 when the Petitioner

first appeared in the matter and has held that since no application for leave to defend was filed within 30 days of 14 January 2011, the Petitioner has forfeited his right. This approach is not correct. The period of 30 days started on 11 March 2016 when the amendment was firstly carried out. On that day Petitioner was not even permitted to file an application for leave to defend. For that purpose separate application had to be taken out which was also contested by the Respondent. There was no reason why the application made immediately on the date of carrying out the amendment should have been rejected.

9 The learned Counsel for the Respondent sought to contend that the application for leave to defend does not disclose any particulars and does not make out any reason as to why it should be granted. This however is on the merits of the application and also is not the reason why the learned Competent Authority has passed the impugned order.

10 Therefore, considering the fact that on 11 March 2016 the Petitioner was brought on record as a guardian of the original licensee, the right of the Petitioner accrued to file an application for leave to defend and the application which was tendered within a period of limitation was wrongfully rejected. Considering this position, I am of the opinion that rejection of the application filed by the Petitioner on

the ground that it is barred by limitation is not correct in law and the impugned order therefore, will have to be set aside, however, whether leave to defend should be granted to the Petitioner or not will depend on the examination of the merits of the application.

11 Accordingly, the Writ Petition is disposed off by quashing and setting aside the order dated 13 June 2016 passed by the Competent Authority, Konkan Division, Mumbai. The Petitioner will file an application for leave to defend within a period of four weeks from today. The said application will be considered at its own merits, within a period of four weeks from the date of of filing, as above. Needless to state that if an application for leave to defend is not filed within a period of four weeks, the Competent Authority will proceed with the Petition as per law.

12 It will be open to the Competent Authority to direct the Petitioner to pay arrears of compensation, if any, and also to direct the Petitioner that unless such compensation is paid, no indulgence will be granted to the Petitioner.

(N.M. Jamdar, J.)