

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2988 OF 2018

Vinesh Vinayak Vernekar

And Ors.

...Petitioners

Versus

Purushottam Shivram Dande

...Respondent

....

Ms. Hema M. Whaval, Advocate for the Petitioners.

Mr. Deepak M. Gupte, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 23rd MARCH, 2018

PC.

1. Heard Ms.Hema Whaval, learned counsel for the petitioners and Mr.Deepak M. Gupte, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged (1) the judgment and order dated 6.12.2017 below Exhibits-135, 137 and 140, as also (2) the judgment and order dated 1.2.2018 below Exhibits-61, 63 and 133 passed by the learned Judge, Small Causes Court at Pune in Darkhast No.68/2013. By these orders, the learned trial Judge rejected the applications made by the petitioners, hereinafter referred to as the 'judgment debtors'.

3. The judgment debtors filed applications Exhibits-135, 137 and 140 *inter alia* contending that the Small Causes Court has no jurisdiction to entertain and try the suit and consequently has no jurisdiction to pass eviction decree. The suit premises is situate within the limits of Pune Cantonment board area. This objection was specifically raised in Civil Appeal No.1999/2011 before the Apex Court. The Apex Court directed to file Petition in the High Court. Accordingly, Writ Petition No.2937/2011 is filed in this Court. The issue as to whether the Small Causes Court has jurisdiction to entertain and try the suit in respect of the properties within the limits of Cantonment Board is under consideration of the High Court. The judgment debtors, therefore, prayed that issue may be referred under Section 113 of C.P.C. to the High Court and till such time the execution petition may be stayed as per Section 10 of C.P.C. By order dated 6.12.2017, the learned trial Judge rejected the applications.

4. The judgment debtors had filed applications Exhibit-61, 63 and 133 reiterating the contention that the eviction decree passed by the Small Causes Court is without jurisdiction as the suit premises is situate within the limits of Pune Cantonment Board. Shankar Dande used to collect rent of the suit premises from the judgment debtors till 1997. His widow Kalawati and son Madhukar are the co-owners of the

suit premises. The respondent/decreed holders, however, have obtained decree without their consent or knowledge. The decree is bad for non-joinder of necessary party. The judgment debtors further contended that in 2005 the decree holder had obtained possession of a room admeasuring 15 feet x 14.5 feet from tenant Rajaram Devkar. The decree holder has suppressed this fact by giving wrong measurement of 8 feet x 7 feet of the said room and thus played fraud and obtained decree. As the decree is obtained by playing fraud upon the Court, the same is inexecutable. In order to find out this aspect, the judgment debtors prayed for appointment of Commissioner for carrying out measurements.

5. The decree holder had filed a suit for recovery of possession from Laxmibai Kotas and judgment debtor No.1. The suit was decreed on 10.2.2009. The decree holder, however, has suppressed said fact and obtained eviction decree in the present case by playing fraud. The decree is, therefore, not executable. By order dated 1.2.2018, the learned trial Judge rejected the applications. It is against these orders, the judgment debtors have instituted present Petition.

6. In support of this Petition, Ms. Whaval reiterated the contentions raised in the applications at Exhibits-135, 137 and 140 as

also applications at Exhibits-61, 63 and 133. She contended that the decree holder has obtained decree by playing fraud. The suit property is situate within the limits of Pune Cantonment area. The Rent Act is not applicable. Said issue is under consideration in reference before this Court. She, therefore, submitted that till such time the reference is answered by this Court, the execution proceedings, may be stayed.

7. On the other hand, Mr. Gupte submitted that the learned Single Judge of this Court (Coram: S.A. Bobde, J. as His Lordship then was) in Writ Petition No.7860/2006 [Shri Rajesh Naupatlal Sankla & Anr. vs. Shri Raja Mahendragir Dhanrajgir & Ors.] has considered this aspect and has referred to Section 2(2) of the Maharashtra Rent Control Act, 1999 (for short, 'Rent Act'). The learned Single Judge negatived the contention that the Rent Act is not applicable to Pune Cantonment area. That apart, Division Bench of this Court (Coram: D.K. Deshmukh & K.K. Tated, JJ.) in Writ Petition No.8430/2008 [Smt. Rama Balu @ Balayya Yadav vs. State of Maharashtra & Ors.] also rejected the submission that the Rent Act is not applicable.

8. Mr. Gupte submitted that merely because a reference is pending before the larger bench, this Court should not defer the hearing of the Petition. He relied upon the decision of Apex Court in the case of

Ashok Sadarangani vs. Union of India, (2012) 11 SCC 321 and in particular paragraph-19 thereof.

9. Mr. Gupte submitted that the trial Court decreed the suit on 21.9.2009. Aggrieved by that decision, the judgment debtors preferred Appeal before the District Court. During pendency of the appeal, the judgment debtors took out applications Exhibits 27 and 31 raising identical issue as regards applicability of the Rent Act to Cantonment Area. By order dated 16.7.2011, the learned District Judge rejected the applications. The judgment debtors did not challenge said order. He further submitted that against the judgment and decrees passed by the Courts below, the judgment debtors preferred Writ Petition No.3921/2012 in this Court. In that Petition, the contention that as the suit premises is situate in cantonment area, Rent Act is not applicable was not raised. By order dated 12.10.2012, this Court dismissed the Petition. On the request made by the Advocate for the judgment debtors six months time was granted to vacate the suit premises subject to filing usual undertakings by all adult members in the petitioner's family. Such undertaking was directed to be filed within four weeks from the date of the order. However, the judgment debtors did not file undertaking. They also did not hand over possession of the suit premises. He, therefore, submitted that no case is made out for

interfering with the impugned order.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the suit was decreed by the trial Court on 21.9.2009. Aggrieved by that decision, the judgment debtors preferred appeal in the District Court. Pending Appeal, they took out applications Exhibits-27 and 31 raising the contention that as the suit premises is situate in Cantonment area, Rent Act is not applicable. On 16.7.2011, the learned District Judge rejected the applications. While dismissing the appeal on 4.2.2012 the learned District Judge has considered this aspect in paragraph-27. The learned District Judge observed that the order dated 16.7.2011 was not challenged by the judgment debtors. Aggrieved by these orders, the judgment debtors preferred W.P. No. 3921/2012 which was dismissed on 12.10.2012. A perusal of that order does not indicate that the contention that the Rent Act is not applicable as the suit premises is situate in Cantonment area was raised. The Petition was dismissed summarily and time of six months was given to the judgment debtors to vacate the suit premises subject to filing usual undertaking by all family members in the family. The judgment debtors have not filed such undertakings. They have also not vacated the suit premises. The decree holder, therefore, took out

darkhast proceedings. It is in these proceedings, the judgment debtors have filed application as indicated above. In my opinion, having regard to the fact that the applications Exhibit-27 and 31 were rejected by order dated 16.7.2011 as also having regard to the decision of the learned Single Judge of this Court in Writ Petition No.7860/2006 and the decision of Division Bench of this Court in Writ Petition No.8430/2008, I do not find any merit in the submission of Ms.Whaval. Ms. Whaval submitted that said issue is referred to the larger bench.

11. In the case of **Ashok Sadarangani (supra)**, and in particular paragraph-19, the Apex Court has observed thus :

“19. As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

12. In view thereof, mere pendency of reference will not preclude this Court from proceeding with the matters. Ms.Whaval has not pointed that the decision of the learned Single Judge or decision of Division Bench is modified or altered in any way. In view thereof they continue to hold the field. After perusing the impugned orders and after

perusing the material on record, I do not find that the learned trial Judge has committed any error in rejecting the applications. The petition is nothing but abuse of process of Court as also abuse of process of law. As I am dismissing the Writ Petition, I am refraining from imposing exemplary costs on the petitioners. Hence, Petition is dismissed. The affidavit and the undertakings given by the petitioners are accepted.

(R. G. KETKAR, J.)

Deshmane (PS)