

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3867 OF 2018

EEPC India (Formerly Engineering Export Promotion Council)	...	Petitioner
Vs.		
Office of the Additional Commissioner, Konkan Division and others	...	Respondents

Mr. P. J. Thorat a/w. Mr. M. Siganporia, Mr. S. Ghosh, Mr. Samarth
Chowdhary, Mr. Rohil Bandekar i/b. M/s. Hariani & Co. for Petitioner.
Mr. A. P. Wachasundar for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : APRIL 10, 2018

P.C. :

Heard Mr. Thorat, learned Counsel for the petitioner and
Mr. Wachasundar, learned Counsel for the respondent No.3 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 08.03.2018 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision Application No.130 of 2018. By that order, the Commissioner declined to grant stay to the order dated 10.01.2018 passed by the Competent Authority (Rent Control), Konkan Division, Mumbai (for short 'Competent Authority') and declined to stay further proceedings before the Competent Authority.

3. Petitioners had instituted Revision Application No.130 of 2018 challenging the order dated 15.03.2017 passed by the Competent Authority on an application dated 06.03.2017 preferred by them in Application No.13 of 2005 inter alia praying for - (a) taking on record petitioners' additional written statement and (b) for striking out inadmissible portions of respondent No.3's affidavit of evidence.

4. Mr. Thorat invited my attention to the application dated 06.03.2017 filed by the petitioners. By that application, petitioners prayed for taking on record additional written statement to the amended application of the third respondent. By prayer clause (b), petitioners prayed that application for striking out inadmissible portions of evidence be allowed to be filed and considered. Along with this application, application at exhibit-N (pages 135 to 142) was enclosed. By order dated 15.03.2017, the Competent Authority rejected the prayer for taking additional written statement of the petitioner on record and declined to strike out evidence of Nirajkumar Dubey.

5. Aggrieved by that decision, petitioners instituted Revision Application before the Commissioner. By order dated 31.07.2017, the Commissioner allowed the Revision Application and set aside the order dated 15.03.2017 passed by the Competent Authority.

6. The petitioner filed application dated 13.09.2017 inter alia praying for taking their additional written statement on record and the same be exhibited and for striking out irrelevant and impermissible portion of respondent No.3's affidavit of evidence dated 26.09.2016. By order dated 10.01.2018, the Competent Authority rejected the application for striking out portion of respondent No.3's affidavit of evidence and directed matter to proceed further for recording of evidence of the witness of the respondent No.3. Aggrieved by this order, petitioner instituted Revision Application No.130 of 2017 before the Commissioner. Petitioner prayed for stay of further proceedings before the Competent Authority during the pendency and final disposal of the revision application. By the impugned order, Commissioner rejected the said application. It is against this order, present Petition is instituted.

7. In support of this Petition, Mr. Thorat submitted that while refusing to grant stay to the order dated 10.01.2018 as also stay to the further proceedings before the Competent Authority, the Commissioner did not assign any reason. He invited my attention to the application dated 06.03.2017 made by the petitioner claiming following reliefs:

- a) Additional Written Statement be amended. Application be taken on record;
- b) Application for striking off inadmissible portions of evidence be allowed to be filed and considered;

8. Along with that application, application exhibit-N (pages 135 to 142) was enclosed. In that application, petitioner prayed for striking out irrelevant portion of applicant No.1A's affidavit, as stated in paragraph 6 of that application.

9. Mr. Thorat submitted that though by application dated 06.03.2017, prayer was made for permission to file application for striking out inadmissible portion of evidence, the Competent Authority proceeded to reject the application for striking out evidence of respondent No.3's evidence. He has invited my attention to grounds 'N' and 'P' of the Revision Application to contend that before the Commissioner, petitioner specifically agitated that though no contentions were advanced before the Competent Authority for striking out evidence of respondent No.3's evidence and the prayer seeking permission to file application for striking out evidence of that witness was made, the Competent Authority proceeded to decide that application and rejected the prayer with the result, an application at exhibit-N (pages 135 to 142) is rendered infructuous. That apart, while rejecting the stay to the order dated 10.01.2018 and stay to the further proceedings before the Competent Authority, no reasons are given by the Commissioner.

He, therefore, submitted that the impugned order deserves to be set aside thereby staying the further proceedings before the Competent Authority. It is also necessary to direct the Competent Authority to decide the application at exhibit-N (pages 135 to 142) praying for striking out irrelevant portion of affidavit dated 26.09.2016.

10. On the other hand Mr. Wachasundar supported the impugned order. He invited my attention to the order dated 06.03.2017 passed by the Competent Authority, and in particular paragraph 2 thereof. In paragraph 2, the Competent Authority noted the objection raised on behalf of the petitioner herein to the affidavit dated 26.09.2016 on the ground that his evidence as a legal heir is hearsay and therefore the same should be struck out from the evidence. He submitted that the grounds 'N' and 'P' in Revision Application No.130 of 2017 do not say that no such contention was advanced before the Competent Authority. He, therefore, submitted that no case is made out for interfering with the impugned order. He further submitted that this Court has expedited the hearing of the proceedings before the Competent Authority and therefore, the Commissioner was justified in declining stay to the order dated 10.01.2018 as also stay to the further proceedings before the Competent Authority. He, therefore, submitted that no case is made out for interfering with the impugned order.

11. 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, petitioner has filed application dated 06.03.2017 for taking on record additional written statement as the respondent No.3 amended the application No.13 of 2005 filed under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). By prayer clause (b), petitioner prayed for permission to file application for striking out inadmissible portion of evidence be granted and

considered. During the course of hearing, Mr. Thorat stated that application at exhibit-N (pages 135 to 142) was enclosed along with application dated 06.03.2017. I have already extracted prayers (a) and (b) of the application dated 06.03.2017 in the earlier part of the order. A perusal of the record therefore, clearly indicates that along with the application dated 06.03.2017, petitioner enclosed application at exhibit-N (pages 135 to 142) to this Petition. By prayer clause (a) of application, petitioner prayed for taking of additional written statement on record. By prayer clause (b), petitioner not only prayed for grant of permission to file application for striking out inadmissible portion of evidence but also for consideration of that application. Along with this application, application at exhibit-N (pages 135 to 142) was enclosed. That apart, perusal of the order dated 15.03.2017, and in particular unnumbered second paragraph of that order shows that petitioner objected to the affidavit of evidence of Nirajkumar Dubey dated 26.09.2016 on the ground that his evidence as a legal heir is hearsay and therefore the same should be struck out from the evidence. In other words, petitioner had filed two applications, one dated 06.03.2017 and another being application at exhibit-N (pages 135 to 142). It is in that context, on behalf of the petitioner, submissions were advanced before the Competent Authority for striking out affidavit of evidence dated 26.09.2016. Mr. Thorat submitted that no such submissions were advanced before the Competent Authority and what was prayed was only for permission to file application for striking out irrelevant portion of affidavit of evidence dated 26.09.2016.

12. With the assistance of the learned Counsel for the parties, I have perused the grounds 'N' and 'P' of the Revision Application. After perusal of these grounds, it is not possible to accept submission of Mr. Thorat that the said contention was not agitated before the Competent

Authority. It is also inconceivable that the Competent Authority dealt with the contention which was not agitated before it. Thus, it has to be held that the petitioner advanced submissions for striking out portions of affidavit of evidence dated 26.09.2016. The Competent Authority considered Section 24 of the Act as also the definition of 'landlord' which includes successor in interest. It is also relevant to note at this stage that during the pendency of the proceedings under Section 24, original applicant Ms Savitri Dubey died and application dated 25.07.2016 was taken out for bringing Nirajkumar Dubey being her son on record. On 22.08.2016, reply was filed by the petitioner giving no objection for bringing him on record. Explanation (a) to Section 24 lays down that expression 'landlord' includes a successor in interest who becomes a landlord of the premises as a result of death of such landlord. In view thereof, I do not find that the Competent Authority committed any error in dealing with the submission advanced by the petitioner for striking out portion of the affidavit dated 26.09.2016.

13. Aggrieved by the order dated 15.03.2017, petitioner preferred Revision Application before the Commissioner. By order dated 31.07.2017, Commissioner allowed the Revision Application and set aside the order of the Competent Authority dated 15.03.2017. Mr. Thorat submitted that as the Revision Application was allowed and the order dated 15.03.2017 was set aside by the Commissioner, the prayers (a) and (b) made in the application dated 06.03.2017 stood granted. He submitted that in the order dated 10.01.2018, the Competent Authority committed serious error in holding that prayer for striking out portion of affidavit of evidence dated 26.09.2016 was rejected by the Commissioner. He, therefore, submitted that the order dated 10.01.2018 passed by the Competent Authority deserves to be set aside. It is not possible to accept this submission. A perusal of the findings and

decision of the Commissioner clearly shows that the Commissioner has considered only prayer (a) of application dated 06.03.2017 namely, for taking on record additional written statement of the petitioner. The Commissioner has not touched prayer clause (b) of that application. It is, therefore, not possible to accept the submission of Mr. Thorat that as the Revision Application is allowed and the order dated 15.03.2017 is set aside, prayer (b) of the application dated 06.03.2017 stood granted. It is settled principle of law that if there is any discrepancy between the operative part of the order and the reasoning of the order, the reasoning prevails. In other words, the operative part of the order has to be in conformity with the reasoning part of the order.

14. The Competent Authority has considered this aspect in paragraphs 8 to 10 of the order dated 10.01.2018. In paragraph 8, the Competent Authority observed that the Commissioner has only considered the grievance of the petitioner herein about denial of opportunity to file additional written statement and the Commissioner did not deal with prayer clause (b) of the application dated 06.03.2017. In paragraph 9, after referring to the decision of the Apex Court in ***Mohanlal Vs. Anandibai*, AIR 1971 SC 2177**, and ***Paper Products Limited Vs. Commissioner of Central Excise*, AIR 2007 SC 701**, the Competent Authority observed that by order dated 31.07.2017, the Commissioner partly allowed the Revision Application to the extent of taking additional written statement on record which accordingly was taken on record. For the reasons recorded in paragraphs 8 to 10 of the order dated 10.01.2018 of the Competent Authority, I do not find that the Competent Authority committed any error. If that be so, I do not find that the Commissioner committed any error in declining to stay order dated 10.01.2018 as also declining to stay further proceedings before the Competent Authority. This Court has directed the Competent Authority to expedite proceedings under Section 24 of the Act. That apart, under

Section 43(4)(c), after the leave to contest the application is granted, the Competent Authority has to commence the hearing of the application as early as practicable and as far as possible has to proceed with the hearing from day to day and decide the application as far as may be within 6 months of the order granting of such leave to contest the application. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

15. At this stage, Mr. Thorat applies for continuation of order dated 27.03.2018 for a period of 4 weeks from today. Mr. Wachasundar opposes this application on the ground that the proceedings are also expedited by this Court. As this Court has expedited the proceedings under Section 24 before the Competent Authority as also in view of Section 43(4)(c) of the Act, oral application made by Mr. Thorat is rejected. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab