

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.79 OF 2019

Srinath Chintamani Bhandare through his
Power of Attorney Holder Ravi Chintamani Bhandare ... Petitioner
Vs.
Hareram @ Vijay @ Pintu @ Santosh Jagannath
Verma ... Respondent

Mr. Vasant D. Raut for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : MARCH 1, 2019

P.C. :

Not on Board. At the request of Mr. Raut, learned Counsel for the petitioner, taken up for admission.

2. This Petition alleges breach of the interim order dated 05.04.2018 passed by the Competent Authority, Pune Division, Pune by which respondent was directed to pay compensation at certain rate for certain period.

3. Mr. Raut submitted that respondent did not comply with the order dated 05.04.2018. The respondent also did not challenge the said order. The petitioner, therefore, took out application exhibit-70 on 20.06.2018 for striking out the defence of the respondent. By order dated 19.01.2019, the Competent Authority struck out the defence of the respondent. The respondent has not challenged the order dated 19.01.2019. He, therefore, submitted that as the respondent has not complied order dated 05.04.2018, this is a fit case for initiating the contempt proceedings against him.

4. The moot question is whether the Competent Authority is a Court and consequently, Contempt Petition as maintainable. In the case of

Prakash H. Jain Vs. Marie Fernandes, 2003 (8) SCC 431, in paragraphs 12 and 13, the Apex Court has observed thus,

“12. The provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the Act, except to the extent indicated therein itself and for that matter has been given overriding effect over any other provisions in the very act or any other law for the time being in force, though for enforcement of other remedies or even similar remedies under the provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once over again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted thereunder is not 'court' and the mere fact that such authority is deemed to be court only for limited and specific purposes, cannot make it a court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such Competent Authority or clothe such authority with any power to be exercised under the Limitation Act. It is by now well settled by innumerable judgments of various courts including this Court, that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas that the said thing is not in reality that something, the legislative enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more, when the deeming clause itself confines, as in the present case, the creation of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the competent Authority can by no means be said to be 'court' for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963.

13. The Competent Authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and

limitations stipulated by the very provision of law under which the Competent Authority itself has been created. Clause (a) of sub-section (4) of Section 43 mandates that the tenant or licensee on whom the summons is duly served should contest the prayer for eviction by filing, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the Competent Authority to contest the application for eviction as provided therefor. The legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground so stated by him in his application for eviction. It is only when leave has been sought for and obtained in the manner stipulated in the statute that an hearing is envisaged to be commenced and completed once again within the stipulated time. The net result of an application/affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire into the merits of the defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in clause (a) of sub-section (4) of Section 43 of the Act. The order of the learned Single Judge of the High Court under challenge in this appeal is well merited and does not call for any interference in our hands.”

5. Thus, the Apex Court has categorically held that the provisions under Chapter VIII of the Maharashtra Rent Control Act, 1999 (for short 'Act') indicate that the Competent Authority constituted thereunder is not a 'Court' and mere fact that such authority is deemed to be Court only for limited and specific purposes, cannot make it a Court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such Competent Authority or clothe such authority with any power to be exercised under the Limitation Act.

6. Mr. Raut submitted that the Apex Court held that the Competent Authority is not a Court only for making the provisions of the Limitation Act, 1963 applicable. It is not possible to accept this submission. Section 51 of the Act lays down that every Competent Authority shall be deemed to a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

7. Section 345 of Cr.P.C. deals with the procedure in certain cases of contempt and reads thus,

“345. Procedure in certain cases of contempt.- (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860), is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.”

8. Section 346 of Cr.P.C. lays down the procedure where Court considers that case should not be dealt with under Section 345. A perusal of Section 345 of Cr.P.C. shows that the procedure contemplated therein is to be followed when any offence as is described in Section 175 (omission to produce document or electronic record to public servant by person legally bound to produce it), Section 178 (refusing oath or affirmation when duly required by public servant to make it), Section

179 (refusing to answer public servant authorised to question), Section 180 (refusing to sign statement) or Section 228 (intentional insult or interruption to public servant sitting in judicial proceeding) Indian Penal Code, 1860 is committed. The present case does not fall in any of the Sections of the Indian Penal Code, 1860 referred in Section 345 of Cr.P.C.

9. Applying the ratio of **Prakash H. Jain** (*supra*), it has to be held that the Competent Authority is not a Court. Hence, the Contempt Petition is not maintainable. In view thereof, Mr. Raut seeks permission to withdraw the Contempt Petition with liberty to approach the Competent Authority for disposal of Section 24 proceedings in a time bound manner.

10. On the motion made by Mr. Raut, Contempt Petition is allowed to be withdrawn and is dismissed as such. Order accordingly. Liberty is reserved to the petitioner to request the Competent Authority to dispose of the case in terms of Section 43(4)(a) of the Act. If such application is made, the Competent Authority will deal with the same in accordance with law and on the basis of material on record. All contentions of the parties in that regard are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

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