

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3122 OF 2019

Dr. Rajesh Dharia .. Petitioner
vs.
Girgaon CHS Ltd. And anr. .. Respondents

Mr. Pradeep J. Thorat for the Petitioner.
Ms Sunita D. Sonawane for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 27 MARCH 2019.

ORAL JUDGMENT :-

1] Heard Mr. P.J.Thorat, learned counsel for the petitioner and Ms Sunita Sonawane, learned counsel for respondent No.1- Society.

2] The challenge in this petition is to the judgments and awards dated 27th February 2015 and 15th February 2019 by which the Cooperative Court had ordered the eviction of the petitioner and the Appeal Court has confirmed such order by eviction.

3] The record indicates that the petitioner, who was described as opponent No.2 failed to lead any evidence before the Cooperative Court in the matter. The petitioner did not file any application before the Cooperative Court seeking for

recall of the orders closing his evidence, but chose to appeal against the judgment and order dated 27th February 2015 made by the Cooperative Court. By the impugned judgment and order dated 15th February 2019, the Appeal Court has dismissed the petitioner's appeal. Hence, the present petition.

4] Mr. Thorat, learned counsel for the petitioner, submits that the advocate who was appearing for the petitioner had withdrawn his appearance on 2nd December 2008 without furnish of any notice to the petitioner. As a result, the petitioner did not note that he was required to himself attend the proceedings before the Cooperative Court or to engage some other advocate. He relied upon the decision of this Court in ***Dattusing G. Rajput (Thakur) Vs. Bhagwant Devasthan and ors. - 2005 (2) BOM.C.R. 290*** to submit that the advocate, before he is permitted to withdraw his appearance, is required to serve a proper notice upon his client and only thereafter, he may be permitted to withdraw appearance. Mr. Thorat submits that in the present case, no notice was given by the advocate and therefore, the

Cooperative Court was not at all justified in permitting his advocate to withdraw appearance. In any case, Mr. Thorat submits that the petitioner cannot be made to suffer a decree of eviction for fault of his advocate. Mr. Thorat points out that there are some documents which established that the suit premises, which are garage premises, were indeed transferred by the Society to the petitioner. He points out that there are other professionals, who operate Clinics from garage in the Society. For all these reasons, Mr. Thorat submits that the impugned orders warrant interference.

5] Ms Sunita Sonawane, learned counsel for the respondent – society, defends the impugned order on the basis of reasoning reflected therein. She points out that it is recorded that the petitioner was present at the time when her advocate withdrew his appearance. She points out that even the Society sent notices to the petitioner regards the order made by the Cooperative Court. She points out that the petitioner has been callous in the matter and therefore, the Appeal Court has quite correctly declined to indulge the petitioner. She pointed out that since now the allegations

have been made against the advocate, there is nothing on record to indicate that the petitioner has taken any steps whatsoever against his advocate. For all these reasons, she submits that the petition may be dismissed.

6] The rival contentions now fall for determination.

7] The application which the petitioner has produced on record, by which, the petitioner's advocate sought to withdraw his appearance very clearly states that the petitioner -opponent No.2 was very much present in the Court. The records even otherwise do not support the petitioner's case that he was unaware of the proceedings before the Cooperative Court post 2nd December 2008. In such circumstances, the decision of this Court in ***Dattusing G. Rajput (Thakur) (supra)*** is clearly inapplicable.

8] That apart, the petitioner, cannot be permitted to contend that he relied entirely on his own advocate and therefore, he did not even bother to enquire from him about the progress of his matter before the Cooperative Court from

December 2008 till February 2015. From the date of withdrawal of appearance by the petitioner's advocate, the award had been made by the Cooperative Court after almost seven years. For all these period, it is inconceivable that the petitioner did not even bother to make any enquiries with his advocate or his erstwhile advocate or with the Cooperative Court as to the progress of the proceedings in which the eviction award was sought against the petitioner. Mr. Thorat suggested that since the petitioner is a busy professional, he may not have done so. Obviously, the fact that the petitioner may be a busy professional, cannot be an excuse, in any case, it is not a law that because the petitioner is a busy professional and had no time to even enquire about the progress of the matter for seven long years, it is the Society which must suffer. The material on record very clearly establishes the negligence on the part of the petitioner. The plea that it is the petitioner's advocate who was at fault has only been put up in the order to make out some grounds for interference with the impugned award. This plea has not at all been substantiated in the facts and circumstances of the present case.

9] The Appeal Court has quite correctly noted that the petitioner is a busy professional. Therefore, this is not a case of some rustic villager who may have entrusted his entire matter to a city lawyer, in which situation, some indulgence may be expected.

10] The Appeal Court at paragraph 23 of the impugned judgment and order dated 15th February 2019 considered the plea of the petitioner in some details and there is really no error of jurisdiction or unreasonability in the exercise of discretion pointed out.

11] The contentions as regards the so called transfer or the circumstance that some other professionals are also operating Clinics from garage are completely irrelevant. Today, the fact remains that despite opportunities, the petitioner, failed to place his defence before the Cooperative Court. The award of Cooperative Court is backed by the evidence which was placed on record. Accordingly, there is no case made out to interfere with the impugned judgments, awards and orders.

12] This petition is accordingly dismissed. There shall be no order as to costs. The interim order if any, to stand vacated.

13] At this stage, Mr. Thorat, learned counsel for the petitioner, seeks for continuance of the interim relief for a period of eight weeks from today. Since the execution application is already pending, the interim order is extended by a period of six weeks from today. This shall be ofcourse subject to the petitioner filing usual undertaking that he will not create any third party rights in the suit premises or part with the possession of the suit premises. The undertaking to also state in clear terms that in case the petitioner does not secure any interim orders in the meanwhile, he will hand over physical and vacant possession of the suit premises to the Society. The continuation of interim relief is subject to the petitioner filing undertaking within one week from today in this Court. A copy of the undertaking to be furnished to the learned counsel for the Society before the same is filed. If no such undertaking is filed within one week, then, there shall be no continuation of interim order.

(M. S. SONAK, J.)