

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4740 OF 2019

Manilal Patel Clearing Forwarding Pvt. Ltd. ... Petitioner
Vs.
The Trustees of Port of Bombay and others ... Respondents

Mr. R. D. Vora for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : APRIL 11, 2019

P.C. :

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

2. This Petition takes exception to the order dated 27.03.2019 passed by the Appellate Bench of the Small Causes Court at Bombay below exhibit-29 in Appeal No.285 of 2004. By that order, the Appellate Court rejected the application dated 22.08.2017 made by the petitioners, hereinafter referred to as 'defendants', to stay the hearing of the appeal.

3. In support of this Petition, Mr. Vora submitted that in ***Hussainali S. Punjwani Vs. Board of Trustees*, 2012 (3) Bom.C.R. 579**, Justice G. S. Godbole took a contrary view to the view taken by Justice V. C. Daga in ***Shalan Vs. The Board of Trustees of Port of Bombay*, 2009 (3) Mh.L.J. 923**. The matter was referred to larger Bench. By order dated 13.06.2017, the Division Bench (Coram: V. M. Kanade and C. V. Bhadang, J.J.) decided the reference and held that the view taken by Justice V. C. Daga is correct. Against that order, S.L.P. was preferred before the Apex Court. By order dated 06.10.2017, the Apex Court issued notice and stayed the eviction of the petitioners till the date of hearing. He, therefore, submitted that the

Appellate Court was not justified in not staying the hearing of the appeal.

4. I have considered the submissions advanced by Mr. Vora. I have also perused the material on record. As mentioned earlier, Hon'ble Mr. Justice V. C. Daga in *Shalan* (supra) held thus,

“47. In view of the above settled legal position, the right of the petitioners to proceed with the Appeal was unaffected and the lower Appellate Court had jurisdiction to entertain and decide the Appeal filed by the petitioners. It was thus rightly decided by the Lower Appellate Court.

50. In conclusion, it follows that the argument that vested right of the plaintiff is taken away does not hold good, nor is there any foundation for the contention that the later Act is retrospective in its application. All that I have held is that section 15(a) of the Act has prospective operation and not retrospective. The Court of Small Causes did not incur any disability to entertain, try and decide the suit for eviction filed against the plaintiff/respondent (BPT). No other contentions other than dealt herein were raised at this stage, it is also appropriate for this Court to observe that the Public Premises Eviction Act provides for summary eviction of unauthorised occupant as against this the petitioner got much better opportunity before the Court of Small Cause to contest subject suit and that the petitioner did not suffer any prejudice warranting exercise of writ jurisdiction. The Plaintiff is entitled to seek the fruits of long drawn litigation at least after expiry of 29 years.”

5. As against this, Justice G. S. Godbole took a contrary view and referred the matter to the larger Bench. By order dated 13.06.2017, reference was answered by the Division Bench holding that the view of Justice Daga is correct view. It is no doubt true that against that order, S.L.P. was filed before the Apex Court. A perusal of the order passed by the Apex Court on 06.10.2017 shows that the Apex Court has stayed the eviction and not the hearing of the proceedings. In view thereof, I do not find that the Appellate Court committed any error in rejecting the application for stay of the appeal. Hence, Petition fails and the same is

dismissed.

6. Mr. Vora submitted that the Appellate Court has fixed the hearing of the appeal on 15.04.2019. He seeks stay of the order for a period of two weeks from today for approaching the Apex Court.

7. In view thereof, notwithstanding dismissal of this Petition, hearing of the appeal before the Appellate Court is stayed for a period of two weeks without express understanding that no further extension shall be sought for. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab