IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8182 OF 2019

Bhavin H. Kanavia … Petitioner
Vs.
Rufina Ajay Kamdar and another … Respondents

Mr. R. M. Haridas i/b. Mr. Bipin Vora for Petitioner.
Mr. Laxinarayan Ramsiya Shukla i/b. M/s. Legal Vision for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JULY 29, 2019

P.C. :

Not on Board. At the request of Mr. Haridas, taken up in the production Board.

2. Heard Mr. Haridas and Mr. Vora, learned Counsel for the petitioner and Mr. Shukla, learned Counsel for the respondents at length.

3. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 02.05.2019 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision No.814 of 2018. By that order, the Commissioner vacated the stay granted on 19.09.2018 as the petitioners did not deposit Rs.79,200/- within 7 days as per order dated 12.12.2018.

4. Respondents filed Eviction Application No.155 of 2017 before the Competent Authority (Rent Act), Konkan Division, Mumbai (for short 'Competent Authority') under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') against the petitioner herein for recovery of possession of flat No.F-322 admeasuring 744 sq.ft., Raj Arcade CHS Ltd. A/56, Dhanurkar Wadi, Mahavir Nagar, Kandivali

(West), Mumbai situate on land bearing CTS No.118 of village Kandivali Taluka Borivali (for short 'suit premises') inter alia contending that the petitioner approached the respondents. The parties entered into registered leave and licence agreement on 21.12.2015 for a period of 24 months commencing from 15.12.2015 and ending on 14.12.2017. The licence fee was fixed @ Rs.24,000/- per month for the first year and Rs.26,400/- per month for the second year along with security deposit of Rs.1,75,000/-. The respondents contended that for the first year, petitioner was regularly paying the licence fees. He however, thereafter avoided to pay the agreed compensation @ Rs.24,600/-. The cheques issued in this regard were dishonoured. The petitioner also failed and neglected to pay the electricity charges. The supplier namely, Tata Power deducted the charges from the security deposit paid by the respondents and issued notice in that regard on 17.08.2017. After the expiry of the licensed period, respondents called upon the petitioner to handover possession on 13.09.2017 by issuing termination notice on the same day. The petitioner replied to that notice. Thereafter on 10.10.2017, respondents once again called upon the petitioner to vacate the suit premises. The petitioner gave reply on 12.10.2017.

5. After service of the summons, the petitioner failed to file application for leave to defend under Section 43(4)(a) of the Act within 30 days. The application for condonation of delay was taken out by the petitioner in filing leave to defend application. By order dated 19.09.2018, the Competent Authority, relying upon the decision in *Prakash Jain Vs. Marie Fernandes*, **(2003) 8 SCC 431**, rejected the application. On the same day, the Competent Authority allowed the application filed by the respondents under Section 24 of the Act. The operative part of the order dated 19.09.2018 reads thus,

“ <u>O R D E R</u>

(i) The application is allowed.

> (ii) The respondent is directed to handover vacant and peaceful possession of flat No.F-322, Raj Arcade CHS Ltd., A/56 situate at Dhanurkar Wadi, Mahavir Nagar, Kandivali (West), Mumbai to the applicants within 30 days.
>
> (iii) The respondent is directed to pay arrears of monthly license fee till 14th December, 2017 at the rate of Rs.26400/- and thereafter double the rate (26400x2) i.e. Rs.52800/- per month till the vacant possession of the premises is delivered to the applicants."

6. Aggrieved by this decision, petitioner preferred Revision under Section 44 of the Act before the Commissioner. By order dated 12.12.2018, the Commissioner stayed the order dated 19.09.2018 passed by the Competent Authority subject to the petitioner depositing Rs.79,200/- within 7 days before the Competent Authority and fixed the Revision for hearing on 10.01.2019. On 18.01.2019, application was filed by the petitioner for extension of time by 15 days for complying order dated 12.12.2018. By the impugned order, the Commissioner has rejected the application and vacated the stay. It is against this order, petitioner has instituted the present Petition.

7. The matter was taken up in the production Board on 25.07.2019. Upon hearing Mr. Haridas, I called upon him to state whether petitioner is ready and willing to comply clause (iii) of the operative part of the order dated 19.09.2018 passed by the Competent Authority. At his request, the matter was adjourned to 26.07.2019 in the production Board. As none appeared on behalf of the petitioner, matter was kept today in the production Board. Once again, I enquired from Mr. Haridas as to whether the petitioner is ready and willing to comply clause (iii) of the operative part of the order dated 19.09.2018.

8. Mr. Haridas submitted that respondents have not challenged the order dated 12.12.2018 passed by the Commissioner staying the

execution of the Competent Authority's order dated 19.09.2018 subject to the condition of depositing Rs.79,200/- within 7 days. As the respondents have not challenged this order and the petitioner is challenging the order dated 02.05.2019, petitioner cannot be called upon to deposit the amount as per clause (iii) of the operative part of the order dated 19.09.2018. He further submitted that the petitioner may be permitted to withdraw the Writ Petition.

9. On the other hand, Mr. Shukla submitted that the suit premises was given for residential purpose under a registered leave and licence agreement dated 21.12.2015. For the last more than 27 months, petitioner is occupying the premises without paying agreed compensation of Rs.26,400/- per month. He has tendered the statement showing the outstanding amount of compensation due from the petitioner, which comes to Rs.10,45,560/- after deducting security deposit of Rs.1,75,000/-. The same is taken on record and marked 'A' for identification.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the parties entered into registered leave and licence agreement on 21.12.2015. The suit premises was given on leave and licence basis for residential purpose. The licence period commenced from 15.12.2015 and ended on 14.12.2017. The agreed licence fees for first 12 months was Rs.24,000/- per month commencing from 15.12.2015 and ending on 14.12.2016 and Rs.26,400/- per month for the period commencing from 15.12.2016 and ending on 14.12.2017. The respondents filed proceedings under Section 24 of the Act some time in January, 2017 after terminating the licence. Explanation (b) to Section 24 lays down that an agreement of licence in writing is a

conclusive evidence of fact stated therein. Section 24(2) lays down that any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority is liable to pay damages at double the rate of the licence fee fixed under the agreement of licence.

11. Section 44 of the Act provides for remedy of filing revision before the Commissioner against the order passed by the Competent Authority. It is no doubt true that remedy of appeal against the order of Competent Authority is not available in view of Section 44 of the Act. The Commissioner is no doubt, in appropriate cases, invested with power to set aside the order passed by the Competent Authority which will also include power to grant stay to the eviction order passed by the Competent Authority. It however, does not enable the Commissioner to relax or waive the rigours of Section 24(2) of the Act. A perusal of order dated 12.12.2018 shows that the Commissioner granted stay subject to the petitioner depositing Rs.79,200/-, which represents three months compensation @ Rs.26,400/- per month. In my opinion, the Commissioner was not justified in imposing condition of depositing three months' compensation @ Rs.26,400/- while granting stay on 12.12.2018.

12. Mr. Haridas submitted that the said order is not challenged by the respondents. It is not possible to accept this submission. In the case of ***Surya Dev Rai Vs. Ram Chander Rai***, **(2003) 6 SCC 675**, the Apex Court has considered the powers of superintendence under Article 227 of the Constitution of India. In paragraph 22, the Apex Court observed that **"**It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved **or may even be exercised**

***suo motu*.** The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.

(emphasis supplied)"

13. In paragraph 24, the Apex Court observed that "The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate Courts and Tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the Court or Tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction."

14. In paragraph 25, the Apex Court observed that "In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior Court or Tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised *suo motu* as well."

15. In paragraph 26, the Apex Court observed that there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded. It was also held that where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

16. In paragraph 32, the Apex Court referred to the decision in *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru*, **(2003) 6 SCC 641**. In that case, the Apex Court held that the jurisdiction under Article 227 cannot be limited or fettered by an Act of the State Legislature. The supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with interlocutory order. In paragraph 38, the Apex Court summed up the conclusions in a nutshell as under:

> “(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.
>
> (2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.
>
> (3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.
>
> (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts

within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of

> supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

17. It was thereafter observed that though the Court has laid down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. It was further observed that there may be cases where 'a stitch in time would save nine'. At the end, the Apex Court observed that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

18. Applying the principles laid down in the case of **Surya Dev Rai** (*supra*) to the facts of the present case, I am satisfied that the order dated 12.12.2018 passed by the Commissioner was wholly without jurisdiction. The Commissioner has not power to impose any condition, which is contrary to Section 24(2) of the Act, while granting stay. In view thereof, the order dated 12.12.2018 is set aside by exercising suo motu power under Article 227 of the Constitution of India. Unless and until the petitioner is ready and willing to comply clause (iii) of the operative part of the order dated 19.09.2018 passed by the Competent Authority, the Commissioner could not have stayed that order. If the

petitioner is ready and willing to comply clause (iii) of the operative part of the Competent Authority's order dated 19.09.2018, the Court will consider staying the operation of that order. At the request of Mr.Haridas and Mr. Vora, list the Petition for further orders on 31.07.2019 at 3.00 p.m.

(R. G. KETKAR, J.)

Minal Parab