

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1299 OF 2019

Deepak Sakharam Kulkarni and Ors. ... Appellants

Versus

Directorate of Enforcement and anr. ... Respondents

Mr. Aabad Ponda a/w Mr. Subhash Jadhav and Mr. Chandansingh Shekhawat i/by Pandian Law Associates for the appellants.

Mr. H.S. Venegaonkar for the respondents.

Smt. Aruna Pai, APP for the State.

CORAM : B.P. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.
DATE : NOVEMBER 14, 2019

P.C.:

It is not in dispute that in view of the subsequent events which transpired after drafting of the appeal, prayers have been amended. Prayers now aim at seeking restoration of possession of a residential bungalow on paying the amount of Rs.11,13,400/-.

2. Our attention has been invited to chronology of events commencing from 14/2/2019 onwards till 19/09/2019. Effort is to urge that the direction not to take coercive steps in furtherance of notice under section 8(4) of the Prevention of Money

Laundering Act, 2002 is independent and has got no bearing on the payment of so called occupation charges. It is submitted that the matter was before the appellate tribunal on 18/09/2019 and on that date respondents placed before the appellate tribunal quantum of market rate for the first time. The appellate tribunal then adjourned the matter to next day to verify the position from the appellant.

3. On the next day i.e. on 19/09/2019, impugned order has been passed and interim order passed on 28/8/2019 has been vacated. On that date or even before that, the appellants were behind the bars and were not consulted and had no occasion to give any instructions to their advocate. It is claimed that on the basis of wrong statement, interim order has been vacated as if the payment of occupation charges had any bearing on its continuation.

4. Our attention is drawn to the fact that till then no reply was filed and the respondents had on 18/09/2019 sought adjournment to file replies to appeal as well as interim applications.

5. It is submitted that in this situation on 30/09/2019, the appellants have been dispossessed. The appellants have shown readiness and willingness to deposit the amount quantified by

the respondents at market rate and as such they should be placed back in possession.

6. To substantiate these contentions, even developments in the present appeal after the order dated 07/10/2019 are relied upon with a submission that all High Court orders show readiness and willingness even of respondents to restore the possession to the appellants, if the quantified monthly rent amount is deposited.

7. Learned counsel for the respondents do not dispute the chronology or orders. However, it is submitted that the appellate authority has on 19/09/2019 after noticing the lack of instructions, proceeded further to vacate the interim order and this action cannot be seen as without jurisdiction. It is pointed out that the respondents proceeded against the subject property as the property of appellants but latter on learnt that it was transferred about two years back in the name of a minor child. The alleged gift deed has not been even used for mutation purposes. It is further submitted that before taking the decision, suitable notice as per law was given to the appellants. Learned counsel adds that even today, some of the rooms are still locked and appellants have not cooperated with the respondents in opening these rooms.

8. The arguments mentioned supra essentially question the order dated 19/9/2019. Though there is no express prayer to quash and set aside that order, the pleadings and prayers made show that without setting aside that order, restoration of the possession is not possible. The prayers in present appeal can not be granted without restoring order dated 28/8/2019. We therefore, find substance in the contention of the learned counsel for the respondents that the nature of challenge has shifted from challenge in statutory appeal to the challenge to use of discretion.

9. The question whether the order dated 28/8/2019 could have been vacated on 19/9/2019 for want of instructions (as reported to the tribunal) or not can be answered more appropriately by the appellate tribunal itself. It is to be noted that the order has been vacated because of impression given to the appellate tribunal that the appellants did not impart any instructions on the readiness and willingness to deposit the estimated market rent of Rs.11,13,400/-. It cannot be said that they were not aware of need to deposit at all. The appellate tribunal has recorded that there was no assurance given to it to deposit the use and occupation charges. Because of this, the tribunal had vacated the interim order.

10. If the facts were incorrect and appellate tribunal was misled, the appellants ought to have first approached the very same forum with the grievance and pointed out the correct position.

11. Learned counsel for the appellants has invited our attention to the fact that on 30/09/2019 when the appellants lost possession, the seat of appellate tribunal was lying vacant. Therefore, present appeal came to be filed. Counsel for the respondents submits that the seat is now filled in and the appellate tribunal is functioning.

12. The appellate tribunal has acted on the facts disclosed to it on 19/09/2019. The vacation of the interim orders passed on 28/8/2019 is in the backdrop of that disclosure. We therefore, find it appropriate that the present appellants approach the appellate forum only with their grievance.

13. With the said liberty and keeping all the contentions open, and with a direction to the appellate tribunal to take decision on the request of the appellants within four weeks from today, we dispose of the present appeal.

(SMT. SADHANA S. JADHAV, J.)

(B.P. DHARMADHIKARI, J.)