

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10957 OF 2019

M/s Hickson and Dadajee Pvt. Ltd. ... Petitioner
V/s.

The New India Assurance
Company Limited and anr. ... Respondents

Mr.Abhay Khandeparkar i/by Ms.Radhika Warerkar for
the Petitioner.

Mr.V.Y.Sanglikar with Ms.Vaishali A. Ugale for
Respondent No.1

**CORAM : UJJAL BHUYAN, J.
DATE : OCTOBER 14, 2019.**

P.C.:-

1. Heard Mr.Abhay Khandeparkar and Ms.Radhika Warerkar, learned counsel for the petitioner; also heard Mr.V.Y. Sanglikar assisted by Ms.Vaishali Ugale, learned counsel for respondent No.1.

2. This petition has been filed under Article 227 of the Constitution of India by the petitioner assailing the legality and validity of order dated 18th September, 2019

passed by the Estate Officer i.e. respondent No.2 rejecting the application filed by the petitioner for adducing evidence by introducing the Valuer of respondent No.1 as an additional witness.

3. From the materials on record it is seen that respondent No.1 has initiated eviction proceedings against the petitioner before respondent No.2 under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ("Public Premises Act" hereinafter) which has been registered as Case No. 14 and 14A of 2003.

4. For adjudication of the present controversy, it is not necessary to go deep into the factual matrix of the case. Suffice it to say that petitioner has not only filed written statement, but has also tendered evidence through one witness who has been cross-examined by respondent No.1. Respondent No.1 has also tendered evidence through one witness. The evidence was closed. At that stage, petitioner raised objection as to maintainability of

the proceedings before the Estate Officer on the ground that it could not be evicted from the premises in question by taking recourse to the provisions of the Public Premises Act. This application was rejected by respondent No.2 vide order dated 24th January, 2018.

5. This came to be challenged by the petitioner before this court by filing a petition under Article 227 of the Constitution of India, which was registered as Writ Petition (Stamp) No.5912 of 2018. By order dated 6th March, 2018, the said writ petition was disposed of by directing respondent No.2 to decide the case expeditiously, but not later than six months from the next date of hearing. While disposing of the writ petition this court observed that all contentions of the parties were kept open to be decided at the stage of hearing. Petitioner was directed to commence cross-examination of the witness of respondent No.1. Relevant portion of the order dated 6th March, 2018 is extracted hereunder:-

“3. All contentions raised by the

respondent no.1 are kept open and can be adjudicated by the learned Estate Officer on its own merits. It is made clear that the observations made by the Estate Officer in the impugned order dated 24th January 2018 are prima facie. The learned Estate Officer shall decide all the contentions raised by the parties in this petition at the stage of hearing of Case Nos.0014 and 0014A of 2003 on its own merits without being influenced by the prima facie observations made in the impugned order dated 24th January 2018. The petitioner is directed to commence the cross-examination of the witness proposed to be examined by the respondent no.1 before the learned Estate Officer. Learned Estate Officer shall decide the case expeditiously and not later than six months from the date of next hearing."

6. It appears that on an application filed by the petitioner, this court passed an order dated 10th September, 2018 extending completion of proceeding by a further period of six months. Thereafter, on an application filed by respondent No.1, this court passed order dated 8th July, 2019 further extending the proceedings for four months from 8th July, 2019 as last chance.

7. Thereafter, petitioner filed an application i.e. Ex. C before respondent No.2 to examine another witness namely Shri Amol Bora, Valuer who had submitted valuation report. This was objected to by respondent No. 1.

8. After hearing the matter, respondent No.2 rejected the application of the petitioner by holding that no case for leading further evidence by the opposite party (petitioner herein) was made out. Relevant portion of the order dated 18th September, 2018 is extracted hereunder :

“5. I have heard both parties at length. The Court record shows that the evidence of the Opposite Party was closed on 30.1.2006. Rebuttal Evidence can be led by a party provided proper reasoning has been pleaded as per the provisions of law. The Opposite Party’s application dated 27.09.2019 does not make out any case for leading of such rebuttal evidence. The only ground mentioned is that the Applicant has led the evidence of a valuer in support of the claim for mesne profits. However, the Applicants case for mesne profits is contained in the Applicant’s Notices dated 09.02.2001, 02.11.2001 and 18.02.2002, as well as in their Application dated 13.06.2003. The Opposite Party was given

an opportunity to contest the same, and they have filed their evidence way back in 20.05.2006. By order dated 30th January, 2006, they have closed their evidence. In my opinion, no cause is disclosed by the Opposite Party to now lead any further evidence in rebuttal. I am, therefore, unable to agree with the submissions made by Mr. Warerkar that the Opposite Party is entitled to lead evidence in rebuttal as a matter of right, absent of any reasons to do so. At this belated stage, the Opposite Party cannot be permitted to lead evidence in rebuttal."

9. Aggrieved, present petition has been filed by the petitioner under Article 227 of the Constitution of India.

10. In the first hearing today respondent No.1 has appeared and has filed affidavit-in-reply which is taken on board.

11. Learned counsel for the petitioner submits that the order passed by respondent No.2 is wholly untenable in law and facts in as much as without the evidence of the valuer, petitioner would be handicapped in making its submissions at the time of hearing of the case by

respondent No.2. He submits that rejection of the application of the petitioner amounts to denial of adequate opportunity to the petitioner, thus being in violation of the principles of natural justice. In this connection, he has placed reliance on the decision of the Supreme Court in the case of **New India Assurance Company Limited Vs. Nusli Neville Wadia, reported in AIR 2008 SC 876.**

12. Per contra, learned counsel for respondent No.1 contends that provisions of the Public Premises Act contemplate a summary proceeding. As a matter of fact, after recent amendment, proceedings are required to be concluded by the Estate Officer within 15 days. Being a summary proceeding, interference by the court at the interlocutory stage is not warranted. That apart, any order that may be passed by respondent No.2 would be an appellable one under Section 9 of the aforesaid Act. In so far Article 227 of the Constitution of India is concerned, he submits that this supervisory jurisdiction cannot be invoked to correct any error apparent on the

face of the record, much less any error of law. In this connection, he has placed reliance on the decision of the Supreme Court in the case of **Mohd. Yunus Vs. Mohd. Mustaqim, reported in AIR 1984 SC 38.**

13. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

14. It is trite that the procedure prescribed under Public Premises Act deals with a summary procedure. Though the present proceeding was initiated prior to the amendment brought in the year 2015, nonetheless having regard to the objective of the Public Premises Act, proceedings thereunder are required to be concluded expeditiously. In **Nusli Neville Wadia** (supra), Supreme Court while referring to the provisions of the Public Premises Act observed that this Act provides for a speedy remedy. Estate Officer is expected to arrive at the decision as expeditiously as possible. Though provisions of the Code of Civil Procedure and the Evidence Act are

not applicable, nonetheless principles of natural justice have to be complied with.

15. Having noticed the above impugned order dated 18th September, 2019 may be adverted to, relevant portion of which has already been extracted above.

16. A perusal of the impugned order as extracted above does not indicate that any error has been committed by the Estate Officer in rejecting the application of the petitioner for leading evidence in rebuttal.

17. The impugned order has to be understood in the context of the order passed by this court dated 6th March, 2018 as extracted above which has been extended firstly for a period of six months and thereafter, for further four months making it clear that no further extension of time would be granted beyond the last extension of four months.

18. In so far proceeding under Article 227 of the Constitution is concerned, Supreme court in **Mohd. Yunus** (supra) held that jurisdiction under Article 227 is supervisory. While exercising the supervisory jurisdiction, High Court is only to see that the inferior Court or Tribunal functions within the limits of its authority. It is not a jurisdiction to correct erroneous decisions or even an error apparent on the face of the record.

19. Considering the above and on due consideration, court is not inclined to interfere in the matter at this stage.

20. Writ Petition is accordingly dismissed.

(UJJAL BHUYAN, J.)

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