

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13778 OF 2018

Shri Vispi Burjor Mistry

.... Petitioner

Versus

M/s. Hermes Developers

.... Respondent.

Through its partner Shri.Ketan R. Thakkar

Mr. Venkatesh Shastry for Petitioner.

Vivek Kantawala a/w. Ameya Patil & Shanoy Bafna

i/b. Vivek Kantawala & Co. for Respondent.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 27th SEPTEMBER, 2019

P.C.

The petitioner is said to be the licensee and the respondent a licensor. Invoking Section 24 of the Maharashtra Rent Control Act, the licensor approached the Competent Authority. It was for the petitioner's eviction. In course of time, the respondent filed the affidavit-in-chief. Later, it has filed Exh.84 along with some other exhibits. The other exhibits are not relevant here, though. In other words, the licensor wanted to bring on record additional documentary evidence. On the very same date, that is on 17th February 2018, the Competent Authority allowed that application.

2. As the licensee's counsel submits, oblivious of that development, the licensee filed its reply to the respondent's claim to bring on record the additional evidence. In the meanwhile, as both learned counsel agree, the Presiding Officer has changed.

3. Before the new Presiding Officer, the licensee insisted that the order dated 17th February 2018 (Annexure A-8 in the Writ Petition) is a non-speaking order and that it required recalling. Soon thereafter, the licensee filed this writ petition.

4. Pending this Writ Petition, the licensee, it seems, required the successor-Competent Authority to recall the impugned order and pass a reasoned order. Then, on 21st January 2019, the learned Presiding Officer passed what seems to be a detailed order. But that order only holds that the successor Presiding Officer has no authority to upset his predecessor's order.

5. In the above factual context, I have heard the learned counsel for both the parties.

6. I reckon the impugned order dated 17th February 2018, is devoid of any reason. It is a single sentence, in the vernacular, holding that the "application is allowed". The successor Presiding Officer's order, dt.21st January 2019, passed pending this Writ Petition, has not improved the

position. It only reiterates that the earlier order ought not to be interfered with for, I believe, want of power on his part.

7. It is trite to hold that the reason is the lifeblood of any adjudication—even in the quasi-judicial sphere. The order impugned, I am afraid, is devoid of any reason. Besides, it is an erroneous belief that a successor judicial or quasi-judicial authority cannot recall his predecessor's order. It is at best a question of review: has the authority—the one who passed the order or his successor—has the power to review the order. An adjudicatory forum, no doubt, functions through its presiding officer. But that functioning is not *in personam*; it is *ex cathedra*. That is, by the authority of the chair, rather than by an individual assertion. In the regal front, there is an old exhortation: the king is dead; long live the king. Paradoxical as it may sound, the person occupying a position may change, but the position remains. And whoever succeeds fits into and answers that position. In the eye of the law, there is no break, much less change.

8. So I set it aside, the order dated 17th February 2018 as well as the order dated 21st January 2019. As a result, I hold that the learned Presiding Officer will hear the parties and pass a fresh order on Exh.84.

I notice earlier, on 6th April 2011, this Court directed the Competent Authority to expedite the hearing. Therefore, the learned Competent

Authority will strive to dispose of the application in one month after the order is uploaded.

[DAMA SESHADRI NAIDU, J.]