

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.282 OF 2019

Mr. Ravi Kishanlal Luthara

..Petitioner

Versus

Mr. Ashwin Dilip Devgi

through GAP

Mr. Dilip Subbarao Divgi.

..Respondent

....

Mr. Rameshwar Gite, Advocate for the Petitioner.

Mr. Ghanshyam K. Tripathi, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 11th JUNE, 2019

P.C.

1. Heard Mr. Rameshwar Gite, learned counsel for the petitioner and Mr. Ghanshyam Tripathi, learned counsel for respondent, at length.

2. This Petition takes exception to the order dated 6.3.2018 passed by the Competent Authority, Rent Control Act, Nashik Division, Nashik (for short, 'Competent Authority') in Application No.5/2015 as also the order dated 5.10.2018 passed by the Additional Commissioner, Nashik Division, Nashik (for short, 'Commissioner') in Revision Application No.441/2018. By these orders, the authorities below rejected the application filed by the petitioner for de-exhibiting the documents which were produced by the respondent in earlier round of

litigation, namely, application No.3/2012 filed before the Competent Authority.

3. In support of this application, Mr. Gite submitted that earlier the respondent had instituted Case No.3/2012 before the Competent Authority against the petitioner for recovery of possession of the suit premises. That application was withdrawn. The respondent thereafter filed application No.5/2015 before the Competent Authority. During pendency of this proceeding, leave to defend was granted to the petitioner. The respondent produced the documents along with list Exhibit-6. On 30.10.2017 the petitioner filed application *inter alia* praying for de-exhibiting these documents till such time the contents of the documents are proved. By the impugned orders, the authorities below have rejected the application. He submitted that the authorities below committed serious error in taking these documents on record without proving the contents thereof. He, therefore, submitted that the petition requires consideration.

4. On the other hand, the learned counsel for the respondent supported the impugned order.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the respondent has filed application under Section 24 of the Maharashtra Rent Control Act, 1999

(for short, 'Act') for recovery of possession of the suit premises on the ground that they have given the suit premises to the petitioner on leave and licence basis. It appears that earlier the respondent had filed application being case No.3/2012 before the Competent Authority for recovery of possession of the suit premises, which was withdrawn. Subsequently in the year 2015 the respondent has filed application under Section 24 of the Act for recovery of the possession.

6. The proceedings under Section 24 of the Act are to be tried in a summary manner as per the procedure laid down in Chapter VIII of the Act. Section 39 lays down that the provisions of Chapter VIII shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. Section 43 lays down special procedure for disposal of applications. Section 43(4)(c) lays down that where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application. Section 43(5) lays down that the Competent Authority shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a court of small causes, including the recording of

evidence.

7. In the case of **Prakash H. Jain Vs. Ms. Marie Fernandes**, **AIR 2003 SC 4591**, the Apex Court has considered the provisions of Chapter VIII of the Act in paragraphs-12 and 13 and observed thus :

“12. The provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the Act, except to the extent Indicated therein itself and for that matter has been given overriding effect over any other provisions in the very act or any other law for the time being in force, though for enforcement of other remedies or even similar remedies under the provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once over again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted thereunder is not 'court' and the mere fact that such authority is deemed to be court only for limited and specific purposes, cannot make it & court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such Competent Authority or clothe such authority with any power to be exercised under the Limitation Act, it is by now well settled by innumerable judgments of various courts including this Court, that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas that the said thing is not in reality that something, the legislative enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more, when the deeming clause itself confines, as in the present case, the creation of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by

those very provisions, the competent Authority can by no means be said to be "court" for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1863.

13. The Competent Authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised, in the manner provided therefore and subject to such conditions and limitations stipulated by the very provision of law under which the Competent Authority itself has been created. Clause (a) of Sub-section (4) of Section 43 mandates that the tenant or licensee on whom the summons is duly served should contest the prayer for eviction by filing, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the Competent Authority to contest the application for eviction as provided therefore. The legislature further proceeds to also provide statutory the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground so stated by him in his application for eviction. It is only when leave has been sought for and obtained in the manner stipulated in the statute that an hearing is envisaged to be commenced and completed once again within the stipulated time. The net result of an application/affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire into the merits of the

defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutory cast upon it, to pass orders of eviction in the manner envisaged in Clause (a) of Sub-section (4) of Section 43 of the Act. The order of the learned Single Judge of the High Court under challenge in this appeal is well merited and does not call for any interference in our hands. ”

8. In view thereof, I do not find that the authorities below committed any error in rejecting the application. Subject to this, the Petition fails and the same is dismissed. It is made clear that I have not examined merits of the case. Office shall transmit the R & P to the Competent Authority forthwith. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)