

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1189 OF 2018

Sunderlal Sitaram Nirban and another. ... Petitioners.

V/s.

The Registrar, City Civil Court and another. ... Respondents.

Mr.Rakesh Agrawal with Ms.Chanchal Sajjan Sharma and Ms.Sauleha
Shaikh for the petitioners.

Ms.Neha Bhide for respondent No.1.

Mr.A.L.Patki, Addl.GP for respondent No.3.

CORAM : A.S.OKA AND M.S.SANKLECHA, JJ.

DATE : 29th March 2019

P.C.:

A notice of final disposal was issued by the order dated 13th March 2019. We have heard the learned counsel appearing for the petitioners, the learned counsel appearing for the first respondent and the learned Additional GP for the second respondent. An application was filed by the petitioners before the Competent Authority, Konkan Division, Mumbai established under the Maharashtra Rent Control Act, 1999 (for short "the Rent Act"). The said application under section 24 of the Rent Act was made by the petitioners for eviction of a licensee. An order of eviction was passed by the Competent Authority. An order was also made directing payment of compensation to the petitioners. The order of the Competent Authority was upheld by the Additional Commissioner, Konkan Division. The opponent in the eviction proceedings filed a writ petition challenging the said orders. The orders were confirmed by this

Court. The order of this Court was challenged before the Apex Court. As the special leave petition has been dismissed, the order of eviction and the order directing payment of compensation attained finality. In terms of the order of eviction, possession of the premises was handed over to the petitioner.

For execution of the monetary part of the order, the petitioner filed execution application before the City Civil Court. The execution application was numbered as Execution Application (Stamp) No.1/2017. It appears from the communication dated 2nd February 2017 issued by the Registrar of the City Civil Court, Mumbai to the advocate for the petitioner that the said application was placed before a Committee of Judges. The said Committee of Judges directed the return of the application based on a decision of this Court. On 31st July 2017, the Competent Authority addressed letter to the Registrar of the City Civil Court informing the Registry that the monetary part of the order of eviction has not been complied with and arrears payable by the tenant to the petitioners are to the tune of Rs.30,18,332/-. Our attention is also invited to a letter dated 29th December 2017 addressed by the Registrar of the City Civil Court to the Competent Authority, Mumbai. By the said letter, the attention of the Competent Authority was invited to a decision of this Court dated 19th December 2009 which holds that even the Competent Authority has jurisdiction to entertain the application for execution. Therefore, the execution application forwarded to the City Civil Court was returned to the Competent Authority.

2. After having heard the learned counsel appearing for the parties, we find that the application for execution which was filed by the petitioners could not have been ordered to be returned by the City Civil Court on the basis of an administrative order passed by the Committee of its Judges. Once the application for execution was filed and was assigned a stamp number, the same should have been placed before the learned Judge dealing with the execution applications. If the Registry of the City Civil Court had raised objection regarding maintainability of the execution application, the petitioners were entitled to contend that the said objection was not valid and legal. The issue of maintainability of execution application could have been decided only on the judicial side by the concerned learned Judge of the City Civil Court.

3. Perusal of the letter dated 2nd February 2017 (Exhibit-N to the petition) shows that the execution application was placed on the administrative side before a Committee of the learned Judges and the Committee directed return of the application to the advocate for the petitioners. In our view, the decision taken on 11th January 2017 by the Committee of Judges on the administrative side is illegal inasmuch as the issue of maintainability of the application for execution filed by the petitioners could not have been decided on the administrative side.

4. It is not necessary for us to go into the question whether the City Civil Court could have entertained the application for execution. Suffice it to say that the application for execution could not have been returned in the manner in which it has been done.

5. It appears from the letters at Exhibits-‘O’ and ‘Q’ that after the letter dated 2nd February 2017 was issued by the Registrar of the City Civil Court, the Competent Authority returned the execution application to the Registrar of the City Civil Court. Along with the letter dated 29th December 2017 (Exhibit-Q), the application was again sent back to the Competent Authority.

Hence, we pass the following order:

O R D E R

- (i) We direct the Competent Authority under the Rent Act, Konkan Division, Mumbai to forward the Execution Application (Stamp) No.1/2017 filed by the petitioners to the Registrar of the City Civil Court;
- (ii) The learned Principal Judge of the City Civil Court, Mumbai will place the said execution application before appropriate learned Judge who will decide the issue of maintainability of the Execution Application after hearing the parties;
- (iii) The petition is disposed of on the above terms.
- (iv) It will be open for the petitioners to apply for amendment of the Execution Application. If such application is made, the same shall be decided in accordance with law.

(M.S.SANKLECHA, J.)

(A.S.OKA, J.)