

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3088/2017

Mukesh Ramdevji Agarwal and another

..Vs..

Balmukund Dhruvanarayan Lohiya and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.S. Patil, Advocate for the petitioners.
Shri N.R. Saboo, Advocate for respondent No.4.

CORAM : Z.A. HAQ, J.

DATED : 25.6.2019.

Learned Registrar (J.) has passed an order on 5th October, 2018 pursuant to which the petition is dismissed against respondent No.3. C.A.W. No. 1590/2019 is filed by the petitioners praying that the order passed by the learned Registrar (J.) on 5th October, 2018 be set aside and the petition against respondent No. 3 be restored.

Learned Advocate for the petitioners and learned Advocate for respondent No.4 submitted that the respondent No.3 and respondent No.4 are defendants before the trial Court and their interests are same. As respondent No.4 is represented by an Advocate, writ petition is taken up for hearing.

Respondent Nos.1 to 4 had filed civil suit against the petitioners and the respondent Nos.5 and 6 praying for decree for declaration that they are in settled peaceful possession of the suit plot as statutory lessees protected under the Maharashtra Industrial Development

Corporation Act, 1961 and Maharashtra Government Premises (Eviction) Act, 1955 and they cannot be evicted except by following due course of law. Respondent Nos. 1 to 4 / plaintiffs sought for various other reliefs including decree for permanent injunction restraining the defendant Nos.1, 3 and 4 from evicting plaintiffs except by following due course of law, and restraining the defendant Nos.1, 3 and 4 from disturbing possession of the plaintiffs over the suit plot. In the civil suit, the petitioners (defendant Nos.3 and 4) had filed an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure read with Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. By judgment dated 3rd May 2014, trial Court held that it had no jurisdiction to entertain and decide the civil suit and dismissed the civil suit.

The judgment and decree passed by the trial Court was challenged by respondent Nos.1 to 4 before the District Court in appeal under Section 96 of the Code of Civil Procedure. In this appeal, the petitioners had filed an application (Exh. No.25) contending that the appeal is filed after the prescribed period of limitation and was liable to be dismissed. This application is dismissed by the learned Principal District Judge by the impugned order. Learned Principal District Judge has recorded that respondent Nos.1 to 4 had applied for certified copy on 5th May, 2014, the respondent Nos.1 to 4 were given date 17th May, 2014 to collect the certified

copy, the certified copy was ready on 21st June, 2014 and the respondent Nos.1 to 4 collected the copy on 21st June, 2014. It is not in dispute that if these dates are taken to be correct dates, then the appeal filed by the respondent Nos.1 to 4 is within limitation.

According to the petitioners, the certified copy was ready on 15th May, 2014 on which date they got the certified copy. The petitioners are disputing the endorsement that the certified copy delivered to the respondent Nos.1 to 4 was ready on 21st June, 2014. To substantiate this contention petitioners relied on the affidavit of petitioner No.1. In this affidavit, petitioner No.1 has stated that even the movement of record from the concerned Court to the Copying Section shows that the certified copy to be delivered to respondent Nos.1 to 4 was ready on 15th May, 2014.

In my view, it would not be possible for this Court to examine these controversies in the extra-ordinary writ jurisdiction. The endorsement made by the Copying Section on the certified copy delivered to the respondent Nos.1 to 4 shows that the certified copy was ready on 21st June, 2014. The petitioners have not made any complaint against concerned Clerk of the Copying Section regarding writing endorsement of date on certified copy delivered to the respondent Nos.1 to 4.

After going through the impugned order, I find that the learned District Judge has rightly considered the relevant aspects and the impugned order cannot be said to be illegal necessitating interference by this Court

in the extra-ordinary writ jurisdiction. Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

C.A.W. NO.1590/2019 AND C.A.O. NO.1177/2019

In view of disposal of writ petition these applications do not survive and are **disposed** accordingly. No costs.

JUDGE

Tambaskar.