

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6444/2019

Raju s/o Dadarao Bhakare Vs. Mukund s/o Narayanrao Dole and others

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri P.R.Agrawal, Advocate for petitioner.
Smt. Anjali Joshi, Advocate for respondent no.1.

CORAM : A.S.CHANDURKAR, J.
DATED : NOVEMBER 25, 2019.

Heard learned counsel for the parties at length.

2. The challenge raised in the present writ petition is to the order passed below Exhibit 56 by the Executing Court thereby rejecting the objection filed by the petitioner under Section 47 of the Code of Civil Procedure, 1908 (for short, 'the Code') to continuation of the execution proceedings initiated by the respondent no.1 herein. The subsequent order passed below Exhibit 72 rejecting the review application is also under challenge.

3. The facts in brief are that the respondent no.1-original plaintiff is the owner of a shop admeasuring about 120 square feet. The same was let out to the predecessor of the respondent nos. 2(a) and 2(b). The plaintiff filed Small Cause Suit No.38/2009 seeking eviction of the said tenant on the ground that he had bonafide need of the suit premises and that the suit premises had been illegally let out to the defendant no.2-petitioner herein unlawfully. The defendant no.1 who was the tenant filed his written statement and denied the case as pleaded. He denied that he had inducted the defendant no.2 as a sub-tenant and pleaded that the defendant no.2 was working in the

shop of the defendant no.1. The defendant no. 2 did not file any written statement. During the pendency of the suit, the plaintiff and the defendant no.1 entered into a compromise on 12.07.2010. Under the terms of the compromise, the defendant no.1 admitted that he was liable to pay arrears of rent for a period of 121 months which came to Rs.38,720/-. Besides the arrears of rent, the defendant no.1 also agreed to pay taxes that were levied on the said suit shop. He also agreed to pay 10% annual increase on the amount of monthly rent. The defendant no.1 agreed to clear all the arrears of rent as well as taxes and in view of that undertaking the plaintiff withdrew the said suit. One condition agreed by the parties was that if there was any default in payment of monthly rent in future or if there was a single default in paying the instalment of arrears, the decree for eviction was liable to be passed. The trial Court disposed of the suit in terms of the compromise. Since the defendant no.1 did not comply with the terms of compromise, the plaintiff filed execution proceedings seeking eviction of the defendant no.1. In those proceedings, the defendant no.2 filed an application raising objection under Section 47 of the Code. It was stated in the said application that the execution proceedings were not maintainable as the defendant no.2 was not a party to the suit compromise. The decree in question was not binding on the said defendant no.2. The Executing Court by the impugned order held that the defendant no.2 had no legal right to remain in possession after the defendant no.1 remained in arrears of rent as per the compromise. The terms of compromise were binding on him since he had been illegally inducted as a sub-tenant. The objection was accordingly rejected on 07.06.2019 and the application for review filed by the defendant no.2 was also dismissed on 03.09.2019. These orders are challenged in the present writ petition.

4. Shri P.R.Agrawal, learned counsel for the petitioner submitted that the compromise in question was only between the plaintiff and the defendant no.1. The plaintiff had sought eviction of the defendant no.2 in the suit and therefore he had also impleaded the defendant no.2. Under the terms of compromise, no case of eviction was made out against the defendant no.2 and it was only the defendant no.1 who had admitted that he was in arrears of rent. Since the defendant no.2 was treated as a sub-tenant and as there was no case for eviction made out against him in view of the fact that the compromise was silent in that regard, the defendant no.2 was not liable to be evicted on the basis of the said compromise decree. The same was not executable against him. To substantiate his contentions, the learned counsel placed reliance on the following decisions :

- (a) Ferozi Lal Jain Vs. Man Mal and another, 1970 (3) SCC 181.
- (b) Srimathi Kaushalya Devi & Ors. Vs. Shri K.L.Bansal. 1969 (1) SCC 59.
- (c) Central Bank of India & anr Vs. Beena Thiruvengittam. 2019 AIR (Kerala) 164.
- (d) Abdedali Akhan s/o Rahematali Khan Vs. Devidas s/o Dhonduji Poghe, 2012(1) Mh.L.J. 466

He therefore submitted that the objection filed under Section 47 of the Code was liable to be allowed.

5. On the other hand, Smt. Anjali Joshi, learned counsel for the respondent no.1 supported the impugned order. She submitted that the suit premises had been let out only to the defendant no.1. The defendant no.2 had been illegally inducted in the suit premises. In the written statement filed by the defendant no.1 a stand was taken that the defendant no.2 was merely

working with the defendant no.1 and that he was not a sub-tenant. It was further submitted that in the year 2009, the petitioner had left the suit premises and after the death of the defendant no.1, he was trying to obstruct the execution proceedings. She further referred to the order passed by the Executing Court dated 12.03.2018 by which similar objections raised by the defendant no.1 had been rejected. The said order was not challenged further and hence it was binding on the parties. It was only after issuance of warrant of possession that the present objection came to be raised. She therefore submitted that the decree for eviction was liable to be executed and the plaintiff was entitled to receive back the possession. In support of her submissions, reliance was placed on the following decisions :

- (1) Mohammad Aleem Vs. Maqsood Alam and ors.
AIR 1989 Rajasthan 43.
- (2) Vasant Laxman Mote and Ors. Vs. Rajendra Kumar Pande (dead) by L.Rs. Kamlabai Bajranglal Pande and ors. 2002 (4) Mh.L.J. 832.
- (3) Rupchand Gupta Vs. Raghuvanshi (Private) Ltd. and anr. AIR 1964 SC 1889.
- (4) Roshan Lal and anr. Vs. Madan Lal and ors.
AIR 1975 SC 2130
- (5) Abedali Khan Rahematali Khan Vs. Devidas Dhonduji Poghe. 2012(2) B.C.R. 835.
- (6) Nagindas Ramdas Vs. Dalpatram Locharam alias Brijramand and Ors. AIR 1974 SC 471.
- (7) Suleman Noormohamed etc. Vs. Umarbhai Janubhai.
AIR 1978 SC 952.
- (8) Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas(dead) by L.Rs. AIR 1993 SC 1449.

6. I have heard the learned counsel for the parties at length and I have perused the documents placed on record. The undisputed facts indicate that the plaintiff had filed suit for eviction of the defendant no.1 who was the original tenant. It was pleaded that the defendant no.1 had illegally inducted the

defendant no.2 as a sub-tenant. Written statement was filed by the defendant no.1 in which it was pleaded that the defendant no.2 was not his sub-tenant and that the defendant no.2 was working with the defendant no.1 in his Hair Cutting Saloon. Specific averments in that regard are found in paragraph 4 of the written statement. The defendant no.2 did not file any written statement in the said suit. It therefore becomes clear that while according to the plaintiff the defendant no.2 had been illegally inducted by the defendant no.1, it was the case of the defendant no.1 that the defendant no.2 was merely his servant working in the Hair Cutting Saloon. The status of the defendant no.2 as a lawful and valid sub-tenant was neither accepted by the plaintiff nor by the defendant no.1 who is alleged to have inducted him. The defendant no.2 chose not to contest the suit.

7. The compromise in question is entered into between the plaintiff and the defendant no.1 who was the original tenant. It was admitted by the defendant no.1 that he was in arrears of rent for a period of 121 months and he was willing to clear all arrears. On that understanding and on the defendant no.1 undertaking to pay taxes as well as permitted increases, the suit for eviction was withdrawn. It was agreed that in case there was any default in paying the arrears of rent that were agreed to be cleared, the decree was to become executable.

From the aforesaid, it can be seen that when the defendant no.1 admitted that he was in arrears of rent for a period of about 121 months, a case for his eviction under Section 15(3) of the Maharashtra Rent Control Act, 1999 (for short, 'the said Act') was clearly made out. The defendant no.1 who was in arrears of rent agreed to repay all arrears with the condition that failure to pay a single instalment would result in the decree becoming executable. It is thus clear that the ground for eviction

of the defendant no.1 was clearly made out and the fact that the defendant no.1 was in arrears of rent was also admitted by the said defendant no.1. By remaining in arrears for 121 months the defendant rendered himself liable for eviction under Section 15(3) of the said Act. The jurisdictional aspect for seeking execution of the compromise decree is therefore satisfied.

8. According to the petitioner, since he was not a party to the compromise decree, he was not liable to be evicted in proceedings initiated by the original plaintiff for executing that decree. It is to be seen that though it is the case of the defendant no.2 that he was a sub-tenant having been inducted by the defendant no.1, his status as sub-tenant has not been recognised even by the defendant no.1. It is a stand of the defendant no.1 that the defendant no.2 was merely working in his Hair Cutting Saloon as a worker and not as his sub-tenant. The defendant no.2 having not contested the suit by filing his written statement, it is not open for him to now raise a plea that he was a sub-tenant in the suit compromise. That aspect was required to be agitated in the suit by the defendant no.2. The same was however not done. When even according to the defendant no.1, the defendant no.2 was merely his servant it becomes clear that a decree for eviction passed against the tenant would bind his servant/worker. Such servant or worker did not have any separate status from his employer to continue in possession of the suit compromise after his employer suffered the decree for eviction. Since the tenant was being evicted on account of his failure to clear the arrears of rent that decree would naturally bind the defendant no.2 who did not object to the stand taken by the defendant no.1 that the defendant no.2 was merely his worker engaged in Hair Cutting Saloon. Hence the contention that as the defendant no.2 was not a party to the compromise in the suit, the same was not binding

on the defendant no.2 has no merit. Alongwith the tenant his servant is also liable to be evicted. The ratio of the decisions relied upon by the learned counsel for the petitioner do not support his contentions in the peculiar facts of the present case.

9. It is thus found that the original plaintiff was justified in initiating the execution proceedings against both the defendants. The defendant no.2 having failed to contest the suit and it having been pleaded by the defendant no.1 that the defendant no.2 was merely his servant, it becomes clear that the defendant no.2 has no basis whatsoever to obstruct the execution proceedings. The learned Judge of the Executing Court has rightly observed that the defendant no.2 had no legal status to obstruct the execution proceedings. The decree which was sought to be executed was liable to be executed even against the defendant no.2.

10. In that view of the matter, I do not find that the Executing Court committed an error in rejecting the applications at Exhibits 56 and 72. The writ petition accordingly stands dismissed leaving the parties to bear their own costs. The decree for eviction however shall not be executed for a period of four weeks from today.

JUDGE

Andurkar.