

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.947 OF 2020

Prashant Prakash Mali & Ors. ..Petitioners
V/s.
Shivaji Ambadas @ Ambrushi Kadam ..Respondent

Mr.Sujeet R. Bugade for the Petitioners.

Mr.Raghavendra Mehrotra a/w Ms.Pooja Deshmukh for the Respondent.

Mr.Shivaji A. Kadam Respondent present in person.

CORAM : C.V. BHADANG, J.

DATE : 15th JANUARY 2021

P.C.

1. The challenge in this petition, is to the order dated 19th December 2019 (below Exhibit-16) passed by the learned 2nd Joint Civil Judge Junior Division, Barshi in RCS No.1053 of 2017. By the impugned order application (Exhibit-16) filed by the respondent for permission to obtain an electricity connection has been granted.

2. RCS No.1053 of 2017 is filed by the petitioner/landlords, against the respondent for eviction and possession from the suit property which is a residential house, *inter*

alia on the ground of non-user. In the said suit an application Exhibit-16 came to be filed on behalf of the respondent claiming that the petitioner in order to harass the respondent has disconnected the electricity connection to the premises from 01st August 2018 and the Maharashtra State Electricity Distribution Company Ltd. (MSDCL) is unable to release a new connection for want of consent from the petitioners/landlords. It is in these circumstances, that the respondent sought permission for release of a new connection.

3. The application was opposed on behalf of the petitioners. It was denied that there was any electric connection in the said premises. It was also denied that the respondent was occupying or using the said premises. According to the petitioner the respondent was residing in Mangade Chawl, Barshi and thereafter Fafalwadi Road at Barshi.

4. The learned Trial Court, by the impugned order has permitted the respondent to get a new electricity connection, subject to the fulfilling of all the necessary requirements or formalities. For this purpose the learned Trial Court has placed reliance on Section

29(7) of the Maharashtra Rent Control Act, 1999 ('Rent Act' for short). Feeling aggrieved the petitioners are before this Court.

5. I have heard the learned counsel for the parties. Perused record.

6. It is submitted by the learned counsel for the petitioner that the respondent is not physically occupying or using the said premises as the respondent is residing elsewhere. It is pointed out that there was no electricity connection to the suit premises and as such there was no question of it being disconnected. The learned counsel has placed reliance on the decision of this Court in the case of *Shri.Namdeo Maruti Mane V/s. Ishwar Kondiba Khose*¹ in order to submit that an application under Section 29 of the Rent Act cannot be made in a suit for eviction filed by the landlord. It is submitted that it is for the tenant to take out independent proceedings under Section 29.

7. The learned counsel for the respondent points out that in pursuance of the order passed an application was made to the MSEDCL and electricity connection is already released and has been

1 (2017) MCR 716

made operational. It is submitted that the address of the respondent in the cause title of the suit is shown to be at the suit premises and thus it can not be accepted that the respondent is not residing in the suit premises. It is submitted that the decision in the case of *Namdev Mane* (Supra) is distinguishable on facts. It is submitted that there is a general power in the Court to permit such essential supply or service under the Rent Act.

8. I have carefully considered the rival circumstances and the submissions made. At the outset it is necessary to note that the impugned order has already been effectuated, inasmuch as the electricity connection is already released to the disputed premises. It can be seen that the dispute about non-user is strictly speaking an issue which would arise on merits in the suit as that is one of the grounds under which the petitioners are seeking eviction of the respondent from the suit premises. That apart the trial Court has noted and to my mind rightly so that the present address of the respondent as in the title clause of the suit is same as the suit premises.

9. Section 29 of the Rent Act provides that the landlord shall not cutoff or withhold essential supply or service. Thus the

electricity supply cannot be withheld, more so when the tenant is prepared to avail of such essential supply or services on his own.

10. Coming to the decision in the case of *Namdev Mane*, that was a case where the Trial Court had rejected the application under Section 29 which was challenged by the tenant in an appeal under Section 34 of the Rent Act before the learned District Judge. The learned District Judge allowed the appeal and had granted the application under Section 29. This Court found that the appeal under Section 34 was not maintainable in view of Section 34(1)(d) of the Rent Act. Although the Court has observed that an application under Section 29 cannot be a part of the suit, the principle reason for setting aside the order was that the appeal under Section 34 was not maintainable.

11. There is one more reason why I am not inclined to interfere in the matter. It is now well settled that the jurisdiction under Article 227 of the Constitution of India is neither appellate nor revisional in nature. It is essentially supervisory in nature. Such jurisdiction can be exercised in order to keep the Courts and the Tribunals subordinate to the High Court, within the bounds of their authority. Unless and until the order passed results into manifest

injustice on any party the Court can decline to interfere. See the decision in the *Radhey Shyam and Another V/s. Chhabi Nath & Others² and Shalini Shyam Shetty & Another V/s. Rajendra Shannkar Patil³*. In my considered view the impugned order does not result into any manifest injustice as the same would be subject to the outcome of the suit.

12. Considering the overall circumstances, I do not find that a case for interference, in the supervisory jurisdiction of this Court, is made out. The petition is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

2 (2009) 5 SCC 616

3 (2010) 8 SCC 329