

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

WRIT PETITION NO. 11672 OF 2022

Arjun Arun Hitkari

...Petitioner

Versus

Nirvana Realtors Pvt. Ltd. & Anr

...Respondents

Mr. Anil D'souza i/b. Adv. Kartik Vig for the petitioner.

Ms. Zenobia Shapoor Irani for the respondent no. 1

Mr. S. S. Redekar for the respondent no. 2

CORAM : NITIN W. SAMBRE, J.

DATED : 10th NOVEMBER, 2022

P.C.:

1. The respondents invoke provisions of sub-section (3) of Section 29 of the Maharashtra Rent Control Act, 1999 (for short "the said Act") as the facilities such as use of lift, water supply were disconnected by the petitioner/non-applicant. The said proceedings lead to registration of RES No. 57 of 2021.

2. The Small Causes Court vide order below Exhibit-7 based on the remedy provided under the aforesaid provisions directed restoration of the lift facility so also water supply. The said order was subject matter of challenge before the Appellate Bench in Revision. The Revisional Court dismissed the prayer of the Petitioner. As such, this petition.

3. The contentions of learned counsel for the petitioner are, there does not exist landlord-tenant relationship between the non-applicants and the applicant, as even if the initial tenant was Nirvana Realtors, the illegal transfer of shares and assets have resulted into illegal transfer of tenancy in favour of the respondents/applicants. According to him, in absence of landlord-tenant relationship, the jurisdictional fact ought to have been adjudicated first by the Court before passing the order impugned. So as to substantiate his contention, he has drawn support from the judgments of Hon'ble Apex Court in the following matters:

a. Peter Cajetan vs. Ignatius Pereria 2012(2) Mh.L.J 475

b. Carona Ltd. vs. Parvathy Swaminathan & Sons (2007) 8 SCC 559

4. His further contentions are, the word used in sub-section (3) of section 29 'may' gives a discretion to the Court before passing an order of restoration of essential supplies like that of water and the use of lift facility. He would also invite my attention to the word 'enquiry' in sub-section (3) of Section 29 so as to substantiate his claim that the enquiry contemplated must be in relation to existence of landlord-tenant relationship. He would urge that once the notice is issued before passing of the impugned

order to the petitioner, the least that was expected of the Small Causes Court was to appreciate the contentions of the petitioner as to denial of the landlord-tenant relationship. As such, according to him, the order impugned is not sustainable and liable to be quashed and set aside as no enquiry as to landlord tenant relationship is conducted.

5. He has also prayed that the petitioner be granted liberty to file his reply to the main proceedings taken out by the respondents pursuant to the provisions of section 29 of the Rent Control Act.

6. The aforesaid prayer is opposed by learned counsel for the respondent-applicant as according to her, even if the words 'may' and 'enquiry' are referred to in sub-section (3) of Section 29 of the said Act, the same gives a discretion to the Courts below to exercise powers in a given situation as can be inferred from the language employed therein. She would further urge that the "enquiry" referred to under sub-section (3) can be restricted only to the extent of existence of such facility before the disconnection or withdrawal of the same by the petitioner-landlord. She would urge that once the petitioner has chosen not file reply within the time stipulated, it is not open for the petitioner to seek remedy

from this Court of showing indulgence, particularly when the petitioner has not complied with the order passed by the Courts below since last six months.

7. I have appreciated the said submissions.

8. The provisions of Section 29 of the said Act read thus:

"29. Landlord not to cut-off or withhold essential supply or service:

(1) No landlord, either himself or through any person acting or purporting to act on his behalf, shall, without just or sufficient cause, [cut-off or withhold] any essential supply or service enjoyed by the tenant in respect of the premises let to him.

(2) A tenant in occupation of the premises may, if the landlord has contravened the provisions of sub-section (1), make an application to the court for a direction to restore such supply or service.

(3) Having regard to the circumstances of a particular case the court, may, if it is satisfied that it is necessary to make an interim order, make such order directing the landlord to restore the essential supply or service before the date specified in such order, before giving notice to the landlord of the enquiry to be made in the application under sub-section (3) or during the pendency of such enquiry. On the failure of the landlord to comply with such interim order of the court, the landlord shall be liable to the same penalty as is provided for in sub-section (4).

(4) If the court on inquiry finds that the tenant has been in enjoyment of the essential supply or service and that it was cut-off or withheld by the landlord without just or sufficient cause, the court shall make an order directing the landlord to, restore such supply or service before a date to be specified in the order. Any landlord who fails, to restore the

supply or service before the date so specified, shall, for each day during which the default continues thereafter, be liable upon further directions by the court to that effect, to fine which may extend to one hundred rupees.

(5) Any landlord, who contravenes, the provisions of sub-section (1), shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(6) An application under this section may be made jointly by all or any of the tenants of the premises situated in the same building.

Explanation.- In this section,- (a) essential supply or service includes supply of water, electricity, lights in passages and on staircases, lifts and conservancy or sanitary service;

(b) withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut-off by the municipal authority or any other competent authority.

(7) Without prejudice to the provisions of sub-sections (1) to (6) or any other law for the time being in force, where the tenant,-

(a) who has been in enjoyment of any essential supply or service and the landlord has withheld the same, or

(b) who desires to have, at his own cost, any other essential supply or service for the premises in his occupation, the tenant may apply to the Municipal or any other authority authorised in this behalf, for the permission or for supply of the essential service and it shall be lawful for that authority to grant permission for, supply of such essential supply or service applied for without insisting on production of a "No Objection Certificate" from the landlord by such tenant."

9. Perusal of aforesaid provisions reflects that Section 29 was

brought into statute book so as to provide remedy and safeguard interest of the tenant whose existing essential supply or service enjoyed by him is cut off or withheld without just or sufficient cause. Provisions give tenant who is in occupation of the premises a remedy to make application to the Court for issuance of directions to restore such supply or service under sub-section (2) of Section 29. Sub-section (3) empowers the Court to pass interim order before an enquiry to be made in application preferred under sub-section (2) by tenant. Sub-section 4 provides that upon enquiry, if it is noticed by the Court that tenant was in enjoyment of the essential supply or service and same was cut off or withheld by the landlord without just or sufficient cause, an order can be made directing landlord to restore such supply or service. The difference between sub-section (3) and sub-section (4) of Section 29 is, sub-section (3) can be invoked for passing an interim order without there being any notice or enquiry, whereas sub-section (4) contemplates an order to be passed on enquiry.

10. Explanation to Section 29 provides that essential supply or service includes supply of water, electricity, lights in passages and on staircases, lifts and conservancy or sanitary service.

11. As such, what can be noticed is, Court is given power to

make enquiry on an application of tenant who is in occupation of premises. The nature of enquiry contemplated under the provisions of Section 29 cannot be said to be a detail enquiry but only enquiry which is summary in nature, so as to prima facie find out whether applicant who intends to invoke provisions of Section 29 of the Act can be termed as tenant under the Act and such service or supply was available before its disconnection.

12. In any case, Section 29 does not contemplate detail enquiry for the reason that such status of existence of landlord-tenant relationship can be looked into in an independent main proceedings. The object of Section 29 appears to be to the benefit of tenant who intends to have his grievance redressed expeditiously about withdrawal, cutting off or withholding of essential supply or service such as electricity, water, lifts etc. As such, interpretation of the word "enquiry" as has been claimed by the Petitioner cannot be extended to mean to conduct a full fledged detail enquiry so as to find out existence of landlord-tenant relationship.

13. In case, if contention of the Counsel for the Petitioner that there has to be a detail enquiry as to the existence of landlord-tenant relationship is accepted, then such enquiry will continue for

years together and tenant will be deprived of his claim for essential supplies.

14. In the case in hand, Respondents have specifically come out with a case that suit premises are used by them for office purpose since 22nd September, 1995. It is specifically pleaded that Petitioner has initiated RAE Suit No.401 of 2021 in which, of-course, Petitioner can in detail canvass on the issue of status of tenancy of the Respondents. It has been also specifically pleaded that Respondents were using water supply, lift since time they came in occupation of the premises under tenancy agreement which is a notarized document. As such, it is established that there exists a tenancy agreement between the Petitioner and the Respondents and as such provisions of Section 29 are rightly so invoked and prayer is granted by the Court below. Of-course, finding recorded in an order passed under Section 29 is always subject to outcome of the main civil litigation pending between the parties. All that Court while dealing with application under Section 29 is required to find out is, prima facie status of such person as that of a tenant. Hence, it cannot be said that the Court while dealing with application under Section 29 is required to hold detail enquiry and come to conclusive finding that claimant or

applicant is a tenant. Apart from above, very object with which provision is incorporated is appreciated in the light of submission made by the Counsel for the Petitioner about detail nature of enquiry which he is claiming, same would frustrate the very object of the provision.

15. In the case in hand, the fact remains that the order impugned was passed by Small Causes Court after having recorded satisfaction that - (a) the property is located on the third floor of the building; (b) taking advantage of the pandemic, the water supply so also the lift facility was disconnected and (c) such facilities are necessary for the purpose of enjoying the suit property by the tenant.

16. This Court was inclined to show indulgence in favour of the petitioner to the extent of permitting him to file reply to the main application provided he complies with the order dated 06/05/2022 whereby he was directed to restore the lift facility and water supply to the petitioner.

17. The fact remains that the counsel for the petitioner, on instructions, informs this Court that the petitioner is not in a mood of complying with the said order and rather will contest the proceedings as it is.

18. In the aforesaid background, I hardly see any merit in the writ petition, which warrants exercise of extra-ordinary jurisdiction. The petition, as such fails and stands dismissed with costs.

ANANT
KRISHNA
NAIK

Digitally signed by
ANANT KRISHNA
NAIK
Date: 2022.11.24
17:24:03 +0530

(NITIN W. SAMBRE, J.)