

9 November, 2022.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11889 OF 2022

AND

WRIT PETITION NO. 11891 OF 2022

AND

WRIT PETITION NO. 11896 OF 2022

AND

WRIT PETITION NO. 11897 OF 2022

Cottage Industries Exposition Ltd.

...Petitioner

V/s.

The Brihan Mumbai Electric Supply

and Transport Undertaking and anr.

...Respondents

Mr. D.S. Mhaispurkar a/w. Ms. Siddhi Bhosale i/by. Ms. Jyoti

Chavan, **Advocate for the petitioner.**

Mr. Girish Godbole, Senior Advocate a/w. Mr. Rakesh Singh

a/w. Ms. Heena Shaikh i/by. M.V. Kini & Co., **Advocate**

for respondent no.5.

CORAM : SANDEEP K. SHINDE, J.

CLOSED FOR ORDERS ON : 14/10/2022.

PRONOUNCED ORDER ON : 9/11/2022.

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1. These petitions can be conveniently disposed of by this common order.

Briefly stated facts of the case are as under :

2. The Shop No.1 and Shop No.2 at ground floor of Parivahan Bhavan, Colaba are the "Corporation premises" within the meaning of Section 105A(b) of the Mumbai Municipal Corporation Act. In July, 1999, petitioners were inducted as a lessee in these two premises on specified terms and conditions. On 27th July, 2019 petitioners became unauthorised occupants. Thus, after following the procedure contemplated under Chapter-V-A of the Mumbai Municipal Corporation Act ("M.M.C. Act" for short) vide order dated 30th November, 2021, Estate Manager of the respondent ordered the petitioner to vacate the Shops No.1 and 2 ("said shops" for short) and to pay arrears of rent upto 27th July, 2019 and to pay compensation for unauthorised occupation of the said shops from 27th July, 2019 onwards.

3. Feeling aggrieved by the order dated 30th November, 2021 petitioner filed Miscellaneous Appeals No.94

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and 95 of 2021 before the Bombay City Civil Court under Section 105F of the said Act.

4. Pending Appeals, Learned Judge, City Civil Court, vide order dated 30th November, 2021 stayed the execution of eviction order on condition that, petitioner deposits with the respondent, the arrears of rent and monthly rental payments as specified therein. However, petitioner did not comply with the said orders. Instead, filed a Writ Petition No. 1270 of 2022 impugning the order dated 30th November, 2021. This Court did not interfere with the impugned orders; but recorded the Undertaking of the petitioners, who volunteered to handover vacant and peaceful possession of the said Shops within a week. The statement of the petitioners was accepted as an Undertaking to this Court. As such, vide order dated 11th February, 2022 the Division Bench of this Court disposed of the Writ Petition by directing the City Civil Court to dispose of Appeals No. 94/2021 and 95/2021 expeditiously, and in any event, within a period of four weeks.

5. Thereafter, on 18th February, 2022 petitioners vacated the premises i.e. Shops No.1 and 2 and handed over possession to the respondents.

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6. Thereafter, on 25th March, 2022 petitioners filed two Miscellaneous Applications in the said Appeals, seeking permission to lead additional evidence, vide Exhibit-4 and further on 27th April, 2022 filed two Miscellaneous Applications at Exhibit-5 in Appeals, basically to amend the said Appeals by inserting a new prayer clause, that is;

“(aa). That this Court be pleased to pass an order of restoration of possession of suit premises and further it pleased to direct the respondents to restore the possession of the suit premises to the appellants.”

7. Pending Appeals, on 28th April, 2022 and 23rd May, 2022 respondents inducted M/s. Solar Sportsware as a lessee in Shops No.1 and 2, respectively.

8. On 13th July, 2022 City Civil Court, vide order dated 13th July, 2022 rejected the applications filed by the petitioners for amendment of the said Appeals; and vide order dated 22nd August, 2022 rejected both Miscellaneous Applications filed by the petitioners to lead additional evidence in the Appeals.

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9. Thus, taking exceptions to orders dated 13th July, 2022 and 22nd August, 2022 petitioners have filed these four petitions under Article 227 of the Constitution of India.

10. Heard Mr. Mhaispurkar, learned Counsel for the petitioners and Mr. Girish Godbole, learned Senior Counsel for the respondents.

11. The Writ Petitions No. 11889 and 11891 of 2022 impugning the order dated 22nd August, 2022 by which petitioners' application for leading the additional evidence, came to be rejected.

12. It is petitioners' case that, in the eviction proceedings under Section 105-B of the M.M.C. Act, on 10th November, 2021, they had filed Affidavit of evidence of witness. Thereafter, matter was adjourned from time to time for cross-examination of witnesses, but for some reasons the witness could not remain present. Thereafter, on 24th November 2021, the Estate Manager-respondent no.2 closed the evidence of the petitioners and matter was adjourned for final arguments on 29th November, 2021. On that day, petitioners preferred an application to recall the order dated

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24th November, 2021. That application was rejected on 29th November, 2021 itself and matter was adjourned for final arguments on 30th November, 2021. Afterwhich, the Estate Manager passed eviction order on 30th November, 2021 under Section 105-B of the M.M.C. Act.

13. Though the petitioners have moved the applications for leading additional evidence, however, the applications do not contain averments, as to whom the petitioners have in mind or intend to examine the witness, nor the application contains averment that, even after exercise of due diligence the additional evidence sought to be produced was not within their knowledge, when the eviction order was passed against them. No matter how, contention of the petitioners, appears to be that, since their witness has not been cross-examined by the opposite party, the said witness is required to be recalled. It is not all logical, but absurd. It is interesting to note, that the opposite party made no grievance for not affording opportunity to cross-examine the petitioner's witness. In these circumstances, the trial Court has correctly observed that, the petitioners had moved these applications to protract the proceedings. That even otherwise, in the facts and circumstances of the case, the

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applications seeking to produce the additional evidence, being preferred in most casual manner, without stating as to whom the petitioners intend to examine, in my view, applications moved for leading the additional evidence, was nothing, but abuse of process of law. For these reasons, the Writ Petitions No. 11889 and 11891/2022 are dismissed with costs of Rs.10,000/- each. The petitioners shall deposit the costs i.e. Rs.20,000/- in the Maharashtra Legal Services Authority within four weeks from the date of this order.

14. The next two petitions i.e. Writ Petitions No.11896/2022 and 11897/2022, seek to challenge the order dated 13th July, 2022 below Exhibit-6 in Miscellaneous Appeals No.95/2021 and below Exhibit-7 in Miscellaneous Appeal No. 94/2021. These two applications (Exhibits-6 and 7), were moved by the petitioners in pending Appeals basically to amend the Appeals by inserting the prayer seeking restoration of possession of the suit shops and to direct the respondents to restore the possession thereof to the petitioners. These applications were rejected by the learned Judge on 13th July, 2022. I have no reason to interfere with these orders, for two reasons, (i) the petitioners voluntarily vacated the shop premises in view of Undertaking given to

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this Court in Writ Petition No. 1270/2022; and (ii) on 18th February, 2022 the petitioners vacated the shop premises and handed over possession to the respondent-Corporation. Therefore, once possession of the shop premises was handed over in view of Undertaking to this Court, the applications seeking restoration of possession, could not have been moved. Therefore, the applications seeking restoration of possession was nothing but abuse of process of law. For this reason, the petitions are dismissed with costs quantified at Rs.10,000/- each. The petitioners shall deposit Rs.20,000/- with Maharashtra Legal Services Authority within four weeks from today.

15. For the reasons stated above, all petitions are dismissed with costs.

**NEETA
SHAILESH
SAWANT**

(SANDEEP K. SHINDE, J.)

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NEETA SHAILESH
SAWANT

Date: 2022.11.09
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