

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

C.A.O. NO. 180/2021 IN MCA ST. NO. 5540/2020 IN W.P. NO. 3450/2018 (D)

(DINKAR BALKRUSHNA RANADE **VERSUS** BHAGWANDAS BHAICHAND LOHANA)

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

Court's or Judge's order

Shri S.P. Dharmadhikari, Senior Advocate with Shri C.S. Dharmadhikari, counsel for the applicant.

Shri M.G. Bhangde, Senior Advocate with Shri Rahul Bhangde, counsel for the non-applicant.

CORAM : A. S. CHANDURKAR, J.

DATE : 01ST APRIL, 2022.

For the reasons stated in the application, the civil application is allowed.

M.C.A. ST. NO. 5540/2020.

The applicant seeks review of the judgment dated 16.08.2019 passed in Writ Petition No.3450 of 2018. By the said judgment, the challenge raised to the dismissal of the suit for eviction as filed under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'the Act of 1999') and affirmed by the Appellate Court came to be maintained. This judgment dated 16.08.2019 was challenged before the Hon'ble Supreme Court and the Special Leave Petition was dismissed on 31.01.2020. While doing so it was observed that if the petitioner files a review application, it could be considered on its own merits.

It is submitted by the learned Senior Advocate for the applicant that initially on 01.08.2006 a notice seeking to terminate the tenancy of the non-applicant came to be issued and based on that notice Special Civil Suit No.44 of 2006 for eviction came to be filed. In the written statement a plea was raised that since the tenancy was with regard to manufacturing activities the notice period of fifteen days was insufficient. Thereafter the prayer for possession came to be deleted. On 27.02.2008, another notice was issued by the applicant which was replied by the non-applicant on 02.06.2008 claiming the same to be illegal. Thereafter on 06.06.2008, yet another notice seeking to terminate the tenancy came to be issued and based on that notice Special Civil Suit No.5 of 2009 was filed on 05.02.2009. It is submitted that this Court while deciding

Writ Petition No.3450 of 2018 proceeded on the premise that Special Civil Suit No.44 of 2006 which was the initial suit, was based on the notice dated 06.06.2008/16.06.2008. This was factually incorrect for the reason that Special Civil Suit No.44 of 2006 was based on the earlier notice dated 01.08.2006. It was the subsequent suit being Special Civil Suit No.5 of 2009 that was filed pursuant to the notice dated 06.06.2008/ 16.06.2008. Since the Court proceeded to adjudicate the writ petition under the aforesaid mistaken assumption which was a mistake of fact, a case for reviewing the order dated 16.08.2019 had been made out. Reliance in that regard was placed on the decision in *Board of Control for Cricket in India & Another Versus Netaji Cricket Club & Others* [(2005) 4 SCC 741]. It was further urged that this Court in Letters Patent Appeal No.137 of 1994 having recorded a finding that the applicant had made out a case of *bona fide* need that finding operated as *res-judicata* in the subsequent litigation. There was no need therefore to re-open the question of *bona fide* need of the applicant and the suit for eviction ought to have been allowed. The ground with regard to *res-judicata* had been raised in the appeal that was filed for challenging the dismissal of Special Civil Suit No.5 of 2009 as well as in the writ petition and the Special Leave Petition filed before the Hon'ble Supreme Court. Reliance in that regard was placed on the judgment of the Constitution Bench in *State of Tamil Nadu Versus State of Kerala & Another* [(2014) 12 SCC 696]. It was thus urged that on these counts the review application deserves to be allowed.

On the other hand, the learned Senior Advocate for the non-applicant opposed the aforesaid submissions. It was submitted that the Court while deciding Writ Petition No.3450 of 2018 did not proceed under any misconception of fact. The wrong reference made to Special Civil Suit No.44 of 2006 was inconsequential for the reason that the entire material on record had been considered while affirming the findings recorded by the trial Court and the first Appellate Court as regards lack of *bona fide* need of the applicant. It was further submitted that the bar of *res-judicata* was not pleaded in Special Civil Suit No.5 of 2009 and in absence of any pleading there was no occasion for the non-applicant to respond to such plea. As a result no issue was framed by the

trial Court. This aspect was being raised without it being urged earlier. In that regard, the learned Senior Advocate placed reliance on the decisions in *Collector of 24 Parganas & Others Versus Lalith Mohan Mullick & Others* [1988 Supp. SCC 578], *Pitamber Kanhayalal Khattar & Another Versus Sadanand Harishchandra Honawar & Another* [2007(1) Mh.L.J. 816] and *Sahebrao Gulabrao Dhamle (Since deceased through his legal heirs) Shankar Sahebrao Dhamle & Others Versus The Special Land Acquisition Office No.1 & Others* [2017 SCC Online Bom 4225]. Reference was made to the contentions urged on behalf of the applicant in Writ Petition No.3450 of 2018 and the grounds raised in the Special Leave Petition. It was thus pointed out that after considering various admissions of the applicant in his cross-examination it was found that Special Civil Suit No.5 of 2009 had been filed under the provisions of Section 16(1)(g) of the Act of 1999. All contentions urged by the applicant had been taken into consideration while deciding the writ petition. In absence of any error apparent on the face of record, there was no ground made out to review that order. Reliance was also placed on the decisions in *Radhakrishna Co-operative Housing Society Ltd. & Another Versus State of Maharashtra & Others* [2017(6) Mh.L.J. 932], *Khela Banerjee & Another Versus City Montessori School & Others* [(2013) 7 SCC 615] and the order dated 13.03.2020 in **Miscellaneous Civil Application No.230 of 2020** [*Sudhakar Ambadas Ghode & Another Versus Ravindra Hariramji Munne & Others*]. It was thus submitted that the review application was liable to be rejected.

Having heard the learned counsel for the parties and having given due consideration to the rival submissions, I do not find that there is any ground made out to invoke review jurisdiction. After considering the deposition of the applicant in its entirety, a finding has been recorded that Special Civil Suit No.5 of 2009 was filed for eviction of the non-applicant on the ground of *bona fide* need under Section 16(1)(g) of the Act of 1999. The admissions of the applicant on having filed the suit under those provisions was also referred to. After examining the evidence on record within the parameters of Article 227 of the Constitution of India, it was found that the Courts did not commit any jurisdictional error while holding against the applicant. When the entire order

under review is perused, it is seen that the recording of the incorrect factual aspect that Special Civil Suit No.44 of 2006 was filed after issuance of notice dated 06.06.2008/16.06.2008 does not make any difference to the conclusion recorded in the order under review. It is true that Special Civil Suit No.5 of 2009 was based on the notice dated 06.06.2008/16.06.2008 notwithstanding the fact that according to the applicant, the averments in paragraph 13 of the plaint to that effect were incorrect. The said factual error is thus inconsequential in the light of material consideration of the grounds of challenge.

As regards the aspect of *res-judicata* being applicable it is seen that the applicant did not plead so in Special Civil Suit No.5 of 2009. It is well settled that for setting up a plea of *res-judicata* the same has to be pleaded so as to put the other side to notice in that regard. Though grounds in that regard have been raised in the appeal and in the proceedings thereafter, there is no foundation for the same in the plaint in Special Civil Suit No.5 of 2009. Hence, even on this count it cannot be said that there is an error apparent on the face of record while dismissing Writ Petition No.3450 of 2018.

After considering the decisions relied upon by the learned counsel, I do not find any case made out to invoke review jurisdiction. The review application is therefore dismissed with no order as to costs.

(A. S. CHANDURKAR, J.)

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