

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (St.) NO. 3512 OF 2023
WITH
INTERIM APPLICATION NO. 1348 OF 2023
IN
APPEAL FROM ORDER (St.) NO. 3512 OF 2023

Ashok Ramji Pawar ... Appellant/Applicant

Versus

The General Manager, BEST Undertaking & ... Respondents
Ors.

Mr. Rajesh Khobragade a/w. Mr. Kunal V. Phoole for the
appellant/applicant.

Ms. Shristi Shetty a/w. Mr. Bhavesh Wadhwani i/b. M.V. Kini & Co. for
the respondents.

CORAM: G. S. KULKARNI, J.
DATED: 02 March, 2023

P.C.

1. Not on board. Upon mentioning, taken on board upon a praecipe as moved on behalf of the appellant.
2. This appeal is filed assailing an order dated 20 December, 2022 passed by the learned Judge, City Civil Court, Greater Mumbai whereby Notice of Motion No. 2419 of 2021 filed by the appellant in Suit No. 1780 of 2021 has been rejected. The dispute between the appellant and the respondents is in regard to a staff quarter which was allotted to the appellant in the year 1997 during his services. On 1 June, 2020, the appellant retired from the employment of the respondent. Although the appellant having retired, he was

not vacating the staff quarter, hence, on 27 July, 2020 a notice came to be issued to the appellant under section 105B of the M.M.C. Act, 1888 calling upon him to vacate the staff quarter. As the appellant did not vacate the quarter, a show cause notice was issued to him on 3 September, 2020. The appellant did not furnish a satisfactory reply to the show cause notice. Accordingly, eviction proceedings were initiated against the appellant under the provisions of the M.M.C Act, which are akin to the provisions under the Public Premises Act. The proceedings culminated into an eviction order dated 10 November, 2020 being passed against the appellant. In pursuance of an eviction order, notice dated 13 August, 2021 was issued by the Corporation to vacate the staff quarter. The appellant in such circumstances approached the City Civil Court assailing the eviction order, by filing Miscellaneous Appeal no. 21 of 2020, which came to be adjudicated vide judgment and order dated 13 September, 2022 passed by the learned Principal Judge, City Civil Court, Greater Mumbai whereby the said appeal of the appellant was dismissed. It is not in dispute that the said order has attained finality.

3. It, however, appears that during the pendency of the appeal proceedings, the appellant moved the suit in question *inter alia* disputing the notice dated 13 August, 2021 issued by the respondent-Corporation calling upon the appellant to vacate the premises. The suit was quite unwarranted inasmuch as the appellant had already filed Miscellaneous Appeal No. 21 of 2020 on 8

December, 2020, which was pending adjudication and any relief in regard to the eviction could have been prayed for in the said appeal. It is in such suit, Notice of Motion in question came to be filed by the appellant, praying for an ad-interim injunction that the possession of the tenement be protected and the appellant be not evicted.

4. Learned counsel for the appellant in assailing the impugned order has limited submissions. He submits that the appellant is ready and willing to vacate the quarter, provided six months time is granted to him to vacate the premises. There is no other contention on merits. Moreover, as noted above, order dated 13 September, 2022 passed by the learned Principal Judge, City Civil Court on eviction has attained finality, by virtue of which the appellant cannot claim any rights to occupy the quarter in question.

5. On the other hand, learned counsel for the respondent has submitted that there are dues amounting to Rs.5 lakhs, which are payable by the appellant in regard to his illegal occupation. She has drawn the Court's attention to the order dated 13 September, 2022 and more particularly, the observations as made in paragraph 11 of the said order, that the appellant intends to occupy the premises, only for the purpose that it is convenient for his daughter for her educational purpose. It is also observed that the appellant has conceded that he has no legal right to stay in the staff quarter.

6. Having heard learned counsel for the parties, in my opinion, although the appellant for himself may be justified to consider his daughter's education requirements to continue to occupy the service quarters, however, in the facts and circumstances, his doing so is illegal, as his eviction from the service quarter, in law has already attained finality.

7. In the aforesaid circumstances, no interference is called for in the impugned order passed by the learned Trial Judge. However, in the peculiar facts of the case, considering the fact that the appellant's daughter is pursuing her education and would undertake an examination, the appellant is permitted to occupy the premises for a limited period of three months, provided he deposits with the respondents an amount of Rs. 3 lakhs within two weeks from today. Such deposit shall form part of an adjustment in the final amount being claimed by the respondents in regard to the outstanding amounts, which the respondents intend to recover as arrears of rent as may be permissible in law.

8. At this stage, it is stated by Mr. Khobragade, learned counsel for the appellant that certain amounts were deposited by the appellant. If that be so, such amounts be also adjusted in calculating the total amount of the outstanding rent, as may be payable by the appellant.

9. It is clarified that in the event, the amount is not deposited, the respondents are free to proceed to evict the appellant as may be permissible in law.

(G. S. KULKARNI, J)