

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

**Appeal from Order No.729 of 2011
With
Civil Application No.6721 of 1995
With
Civil Application No.256 of 1990**

Mr Dharmendrapathi Nagendrapati
Tripathi

Age: 67 Years, Indian Inhabitant residing at
Flat No.:104, Neeloyoung Residency,
Gaurishankar Wadi No.1, Pantnagar,
Ghatkopar, Mumbai 400 075.

... Appellant

Versus

1. The State of Maharashtra
through the Collector of Bombay (Enc),
Old Customs House, Fort, Bombay 400 023

2. The Tehsildar (Enc), Mulund,
Bombay 400 080.

3. The Maharashtra Housing & Area
Development Board having
their office at Bandra, Bombay 400 051 ... Respondents.

...

Mr Rakesh Agrawal i/by Parmeshwar Bhise for the appellant.
None for respondents No.1 and 2.

Ms Neha Bhide for respondent No.3/MHADA.

Coram : R. N. Laddha, J.

Date : 15 April 2024.

P.C. :

Heard Mr Rakesh Agrawal, the learned Counsel appearing on behalf of the appellant, and Ms Neha Bhide, the learned Counsel appearing on behalf of respondent No.3.

2. The appellant (original plaintiff) had filed Short Cause Suit No.3952 of 1989 before the learned City Civil Court at Bombay, challenging the auction notices dated 16 March 1989 and 10 May 1989 issued by respondents 1 and 2 (original defendants No.1 and 2). The appellant had also filed a Notice of Motion seeking interim reliefs. The learned trial Court, on 30 May 1989, granted this interim relief upon an undertaking given by the appellant to deposit a sum of Rs.50,000/- by 31 May 1989. Subsequently, on 29 September 1989, the learned trial Court, by exercising powers under Rules 2A and 11 of Order XXXIX of the Code of Civil Procedure, 1908, dismissed the appellant's suit and directed him to undergo civil imprisonment. The appellant initially assailed the impugned order dated 29 September 1989 by filing a First Appeal bearing No.46 of 1990 before this Court. However, by an order dated 27 June 2011, the appellant was allowed to convert the said First Appeal to the present Appeal from Order.

3. Mr Rakesh Agrawal, the learned Counsel, appearing for the appellant, submits that the dismissal of the suit stems from the appellant's inability to deposit the specified amount with the trial Court. The appellant made earnest efforts to arrange the necessary funds but faced insurmountable challenges due to the prevailing circumstances. Despite the appellant's apology, the Court directed him to submit an affidavit explaining the circumstances that prevented compliance. The appellant duly filed the affidavit, but the trial Court remained unsatisfied with the explanation provided and refused to accept the unconditional apology tendered by the appellant for the non-compliance in depositing the ordered amount. The learned Counsel contends that there was a divergence between the two Government departments, necessitating a thorough enquiry. However, this crucial fact was overlooked by the trial Court and it ordered the appellant to deposit Rs.50,000/- within one day. Although the appellant agreed, he could not comply, leading to a contempt notice. Ultimately, the trial Court deemed the appellant's failure to deposit the amount of Rs.50,000/- as contempt of the court.

4. According to the learned Counsel, the impugned order dismissing the suit and sentencing the appellant to prison or

compensation is legally flawed. The learned Counsel submits that the appellant is now ready to deposit Rs.50,000/- in the Court and seeks the restoration of the suit in the interest of justice. On the other hand, Ms Neha Bhide, the learned Counsel, representing respondent No.3, supports the impugned order and contends that the trial Court's decision cannot be deemed unjustified due to lack of specific compliance.

5. After carefully considering the rival submissions and having examined the record, this Court is of the view that the impugned order cannot be endorsed, and the appellant deserves an opportunity to contest the suit on merits.

6. Upon perusing the material placed on record, it appears that due to the appellant's failure to deposit Rs.50,000/- as directed by the trial Court, the suit was dismissed, and the appellant was sentenced to civil imprisonment. While it is acknowledged that the Court has the authority to impose terms related to costs, payments, or other matters, these requirements should be considered practically rather than punitively for every error. Considering the overall circumstances, a pragmatic approach should have been taken,

leading to appropriate orders. Unfortunately, the appellant's attempt to pursue a fair decision in the suit after a contested process was disregarded. The trial Court's overly technical perspective contributed to this situation. Furthermore, the appellant is prepared to comply with the Court's order regarding the deposited amount.

7. Given the above, the appeal succeeds and is allowed by setting aside the impugned order dated 29 September 1989 passed in S.C. Suit No.3952 of 1989 subject to the deposit of Rs.50,000/- as ordered by the trial Court, within two weeks from the date of uploading of this order. As a result, the said suit shall stand restored to the file of the learned trial Court for being considered on its merits. Furthermore, considering the elapsed time, the learned trial Court is directed to expedite the hearing of the suit. Accordingly, the pending applications also stand disposed of.

[R. N. Laddha, J.]