



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

WRIT PETITION NO. 1328 OF 2020

(AMRUT DAMODARRAO ROKDE & ANR..VS.. SANJAY GATTULAL JAIN & ANR.)

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

Court's or Judge's orders

Shri P.A.Markandeywar, Advocate for Petitioners.
Ms Medha Negi, Advocate for Respondents.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 25, 2024.

1. Heard.
2. The order dated 27/01/2020 passed below Exh.22 by the Special Court for Differently Abled Persons, Senior Citizens and Marginalized Section of Society, Nagpur in Regular Civil Appeal No. 429 of 2015, rejecting the application Exh.22 filed by the petitioners to dismiss the appeal as abated, is under challenge in this writ petition.
3. It is the case of the petitioners-original plaintiffs that the suit for eviction filed against the respondent No.1/ defendant No.1 and his brother Anil Gattulal Jain/ Defendant No.2 was decreed. The suit property is a shop which was allotted to the respondent and his above referred brother on rent and on passing decree in favour of the plaintiffs by the trial Court, the respondent No.1, along with his brother, filed Regular Civil Appeal No.429

of 2015 and during pendency of the said appeal, the defendant No.2 died.

4. Thereafter, the legal heirs of the defendant No.2 filed applications at Exhs. 26, 27 and 30 for bringing them on record as Legal Representatives, which came to be rejected and without challenging the same, similar application was moved at Exh.35, which came to be rejected on the ground that the earlier order on Exhs. 26, 27 and 30, was not challenged and hence, it would operate as *res judicata*.

5. Thereupon, the legal representatives of defendant No.1 filed a writ petition namely Writ Petition No.5471 of 2019, which came to be dismissed vide order dated 20/11/2019.

6. Thus, the effect of the above referred rejection of the writ petition is that the suit was abated against the defendant No.2-Anil.

7. The plaintiffs therefore, moved an application for dismissal of the appeal on the ground that the defendant Nos.1 and 2 were jointly looking after the business and the tenancy was the joint tenancy and after the death of one of the appellants, the decree became final against the defendant No.2. It is submitted that, there cannot be any decree in favour of the defendant No.1

contrary to the decree confirmed against the defendant No.2. It is therefore, prayed that, the appeal be declared as abated. The said application came to be rejected by the impugned order dated 27/01/2020.

8. After going through the said order, it is apparent on the face of the order that the learned trial Court has recorded the arguments made by both the parties and also referred to the judgment cited by the plaintiffs in the case of *Hemareddi..vs..Ramchandra Yallappa Hosmani*, reported in **(2019)6 SCC 756**. However, there is no finding recorded by the first Appellate Court whether right to sue survives or right to sue does not survive in favour of defendant No.1 in given facts and circumstances.

9. It is settled principle of law that the reasons are soul of the order and it is right of the parties to know the reason for granting or denying the relief sought by any of the parties. The Hon'ble Supreme Court of India in the case of *Kranti Associates (P) Ltd. ..vs.. Masood Ahmed Khan*, reported in **(2010) 9 SCC 496** has held thus :

“47. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is

meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to

principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain, EHRR at 562 para 29 and Anya vs. University of Oxford, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process."

10. In absence of reasons recorded by the First Appellate Court, I am of the opinion that the only option left to this Court to remand the matter back to the First Appellate Court to decide the application Exh.22 afresh. Accordingly, I pass the following order :

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 27/01/2020 passed below Exh.22 by the learned Special Judge, Special Court for Differently Abled Persons, Senior Citizens and Marginalized Section of Society, Nagpur in Regular Civil Appeal No. 429 of 2015, is hereby quashed and set aside.
- iii) The matter is remanded back to the First Appellate Court to decide the application Exh.22 afresh, after hearing both the parties.
- iv) The parties are directed to appear before the First Appellate Court on 12/02/2024 at 11:00 a.m.
- v) The First Appellate Court thereupon fix a date for hearing of the application Exh.22 and decide it afresh, within one month from the date of appearance of the parties.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE