



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

WRIT PETITION NO.1601 OF 2024

Rajesh S/o Dhanyakumar Jain .Vs. Sushil Chandra S/o Mangilal Pagari and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Madhur Deo, Advocate for petitioner.

Shri Rahul Kalangiwale, Advocate for respondent No.1.

Ms S.S. Jachak, A.G.P. for respondent No.2/State.

CORAM : ANIL S. KILOR, J.

DATED : 03/04/2024

1. On instruction, the learned counsel for the petitioner makes a statement that he does not want to press the affidavit on behalf of the petitioner dated 01.04.2024.

2. This writ petition takes exception to the judgment and order dated 21.09.2023 passed by the Competent Authority under Rent Control Act Court, Nagpur to the limited extent i.e. Clause (4) which relates to the direction to the petitioner to pay to the applicant damages to the tune of Rs.42,000/- per month from 01.01.2020 till the actual delivery of the vacant possession of the subject premises to the applicant by this Competent Authority.

3. At the outset, Shri Kalangiwale, learned counsel for the respondent No.1 raises an objection to the maintainability of the writ petition pointing out that the

impugned judgment was passed by the Competent Authority under Section 24 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “the Act of 1999”). It is submitted that under Section 43 of the Act of 1999, special procedure for disposal of application, is provided. Whereas, the revision is provided under Section 44 of the Act of 1999 against the order of Competent Authority, for the recovery of possession of any premises made by the Competent Authority in accordance with the procedure specified in Section 43 of the Act of 1999.

4. It is submitted that, the limitation provided for such revision is 90 days whereas, this writ petition was filed beyond the period of 90 days and therefore, on two counts, the writ petition is not maintainable. Firstly, an alternate remedy is available. Secondly, the writ petition is filed beyond the limitation of 90 days. To buttress his submission, he has placed reliance on the judgment of the Hon’ble Supreme Court of India in the case of *Assistant Commissioner (CT) LTU, Kakinada and others ..vs.. Glaxo Smith Kline Consumer Health Care Limited*, reported in (2020) 19 SCC 681.

5. On the other hand, Shri Deo, learned counsel for the petitioner submits that, since the order of direction to pay damages is without jurisdiction for the reason that, as

per the agreement, it was agreed between the parties that in case if the tenant does not vacate the premises on expiry of the agreement, he shall pay Rs.750/- per day as damages whereas, the Court has granted damages Rs.42,000/- per month. Further, the date from which the damages was granted i.e. 01.01.2020 which ought to have from the month of June, 2022, as per the prayer clause made in the application on 26.06.2022.

6. I do not find favour with the submission of the learned counsel for the petitioner that for the error pointed out and the matter herein above the order can be said to be without jurisdiction. At most, it can be termed as error committed by the Competent Authority in determining the amount of damages and not considering the date from which the damages were claimed by way of the prayer Clause-2 of the application.

7. In a case of *Assistant Commissioner* (Supra) the Hon'ble Supreme Court of India has held thus :

“19. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. vs. Union of India and also of the Karnataka High Court in Phoenix Plasts Company vs. Commissioner of Central Excise. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 2005 Act,

cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in Oil and Natural Gas Corporation Limited. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.”

8. From the above referred observations, it is evident that, the Hon’ble Supreme Court of India has held that, the High Court has wide powers under Article 226 of the Constitution of India. However, if there is an alternate remedy, the Court shall observe the self constraint. It further says that, if the writ petition chooses to approach the High Court after expiry of the maximum limitation period for

such alternate remedy, the High Court cannot disregard the statutory period for redressal of grievance and entertain the writ petition of such a party as a matter of course.

9. In the circumstances, I find substance in the submission of Shri Kalangiware, learned counsel for the respondent No.1 that, for two reasons, this Court may not entertain the writ petition namely for having alternate remedy and secondly, the petitioner filed the present petition after the expiry of period of 90 days prescribed for filing of revision.

10. In that view of the matter, I am not inclined to exercise the discretion under Article 226 of the Constitution of India in the present matter. Accordingly, the writ petition is **dismissed**.

11. Liberty is granted to the petitioner to file appropriate proceeding as permissible under the law, if he so desire.

JUDGE