IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3031 OF 2025

Western Manufacturing Co (Bombay) Pvt Ltd ..Petitioner

Versus

United India Insurance Co & Anr …Respondents

Mr. Karl Tamboly, with Tushar Hathiramani, Monisha Mane Bhangale, Chandrajit Das and Manasi Desai, i/b Parinam Law Associates, for the Petitioner.

Mr. V. Y. Sanglikar, with Archana Gaware, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED : 4th MARCH 2025

P.C.:

1. The petitioner-appellant has invoked the writ jurisdiction, being aggrieved by an order dated 13th January 2025 passed by the learned Principal Judge, City Civil Court, Bombay, whereby the execution and operation of the order of eviction passed by the Estate Officer, under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 ("the PP Act") has been stayed on the conditions, *inter alia* of furnishing a bank guarantee to the tune of Rs. 3 Crores till the disposal of the appeal.

2. United Insurance Company Limited, a Government Company, filed an application for eviction of the petitioner, Wester Work Projects

Pvt Ltd and Wester Work Investment Pvt Ltd, assailing that the petitioner and opponent nos. 2 and 3 were the unauthorised occupants of Unit No. 5 on the fifth floor of Vulcon Insurance Building admeasuring 3781 sq ft, in addition to a garage on the ground floor.

3. By an order dated 31st December 2024, the Estate Officer was persuaded to order eviction of the petitioner and opponents as they were found to be in unauthorised occupants and possession of the public premises. They were also directed to jointly and severally pay damages to the respondents @ 5,67,150/- per month with effect from 1st April 2017 along with simple interest @ 7% per annum.

4. Being aggrieved the petitioner preferred an appeal before the learned Principal Judge, City Civil Court. By the impugned order passed under Section 9 of the PP Act, the learned Principal Judge was persuaded to stay the execution, operation and implementation of eviction order subject to certain conditions including furnishing a bank guarantee of Rs. 3 crores till the disposal of the appeal, within a period of six weeks from the date of the said order. Failure would entail the consequence of automatic vacation of the stay order.

5. Mr. Tamboly, the learned Counsel for the petitioner, would urge that the petitioner has questioned the jurisdiction of the Estate Officer to pass an order under the PP Act, as the petitioners were the protected tenants in terms of the judgment of the Supreme Court in the case of

Suhas H. Pophale Vs Oriental Insurance Co Ltd,[1] and in support of the said contention documents of unimpeachable character were produced before the Estate Officer. Those documents were unjustifiably discarded. As the very jurisdiction of the Estate Officer to proceed under the PP Act qua the subject property was questioned, the learned Principal Judge, could not have imposed such onerous condition of furnishing a bank guarantee of Rs. 3 Crores and that too without ascribing any reasons.

6. Mr. Tamboly would urge that the impugned order does not spell out the reasons which weighed with the learned Principal Judge in imposing the condition to furnish the bank guarantee.

7. Mr. Sanglikar, learned Counsel for the respondents, would urge that the reliance on the decision in the case of **Suhas H. Pophale (Supra)** may not advance the cause of the petitioner as the said decision has been referred to a Larger Bench. Secondly, there is a genuine dispute as to whether the documents, banked upon by the Petitioner to claim that it has been in possession of the subject premises since prior to the datum line, pertain to the petitioner. *Prima facie* those documents refer to another entity and not a private limited company. At any rate, according to Mr. Sanglikar, the order passed by the learned Principal Judge is discretionary and such an order can not be interfered with exercise of writ jurisdiction.

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1 (2014) 4 SCC 657.

8. I have carefully perused the material on record. *Prima facie*, there is material to indicate that two registered Lease Deeds precede the datum line. In addition, the petitioner had instituted a suit before the Court of Small Causes being RAD Suit No. 1024 of 2019 and pursuant to the order passed in the said suit the petitioner has been depositing rent at the rate of Rs.19,017/- per month.

9. In the light of the view which this Court is persuaded to take, it may not be necessary to delve further into the facts of the case and the submissions canvassed across the bar. Undoubtedly, under Section 9 of the PP Act, Appellate Authority is empowered to impose conditions while staying execution and operation of the eviction order. A number of variables came into play while imposing the conditions including a direction to deposit or secure the amount towards the unauthorised occupation.

10. Indubitably, nature of the conditions is in the discretion of the Appellate Authority. However, it is equally well-settled that, as in the case of exercise of discretion in any discipline of law, such discretion has to be exercised in a judicious manner. The reasons which weighed with the Court in the exercise of the discretion ought to be evident from the order itself as the question as to whether the discretion has been exercised in a judicious manner can be determined primarily on the basis of those reasons.

11. The impugned order does not spell out the reasons so far as imposing of conditions to furnish bank guarantee of Rs. 3 crores. In the peculiar facts of the case, the necessity of such reasons becomes even more significant as the jurisdiction of the Estate Officer to proceed under the PP Act has been questioned.

12. In the aforesaid view of the matter, without delving into the justifiability of the conditions to furnish the bank guarantee, the matter deserves to be remitted to the learned Principal Judge, City Civil Court to pass a fresh order as regards the condition of depositing and/or securing the amount towards the damages.

13. Hence the following order:

O R D E R

(i) Petition stands allowed.

(ii) The impugned order is quashed and set aside.

(iii) The condition to furnish bank guarantee of Rs. 3 crores stands set aside.

(iv) The learned Principal Judge is requested to pass a fresh order as regards the condition subject to which the eviction order is to be stayed by recording brief reasons and after providing an opportunity of hearing to the parties.

(v) By way of abundant caution, it is clarified that, this Court may not be understood to have expressed any opinion on the merits of the matter.

(vi) It is further clarified that the stay to the execution and operation of the eviction order passed by the Estate Officer shall continue to operate and only the condition to furnish the bank guarantee has been quashed and set aside.

14. Petition disposed.

[N. J. JAMADAR, J.]