

(2009) 03 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No. 1428 of 2001

Bhalchandra Vishwanath Kalve

APPELLANT

Vs

Tulshiram Asaramji Sharma, The Additional Collector, Akola,
The Additional Collector, Washim and The Sub Divisional
Officer and Rent Controller

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Citation : (2009) 4 BomCR 445 : (2009) 111 BOMLR 1740

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : A.L. Deshpande, for the Appellant; N.R. Saboo, for the Respondent

Final Decision : Dismissed

Judgement

J.H. Bhatia, J.—The present petitioner filed an application before the Rent Controller Mangrulpir u/s 13(3)(i)(ii) & (vi) of the Rent Control Order against the respondent claiming that the suit premises is a joint family property and he himself is the Karta of the joint family. The respondent was inducted as a tenant at the rent of Rs. 12/- P.M. in the year 1954. Later on rent was increased to Rs. 25/- because the respondent had taken additional hall on the second floor. It was contended that respondent was habitual defaulter in making the payment of rent. From 01.06.1989 to 31.01.1991 the total rent due from him was Rs. 783/-. He further contended that he had retired from service and he bonafide required the suit premises for his own occupation as he had no other house to live at Mangrulpir. He sought permission to issue quit notice on these grounds.

2. Respondent contested the application denying that he was habitual defaulter and he was in arrears of rent and that petitioner bonafide required the premises for his occupation. According to him the house needed repairs and with permission of the landlord he had spent money on repairs and that amount was adjusted against the rent. He mainly contended that the petitioner was not a landlord nor he was Karta of the joint family. According to him the property was

standing in the name of his brother and the petitioner had no right to issue quit notice to him and he had no locus standi to file such application seeking permission.

3. After hearing the parties, the rent controller rejected the application mainly on the ground that petitioner's mother was the landlady and she had inducted the respondent as a tenant and the respondent was paying the rent to her by sending money order which were received by her. It was found that property was recorded in the name of Arvind Kalve, the brother of the petitioner, and after the mother said Arvind Kalve had become the owner of the property. Rent Controller held that present petitioner had failed to prove that property is joint family property and he is Karta or manager of the said family. In the result application came to be rejected.

4. Against rejection of that application the petitioner filed appeal No. BRA-13(3)/Mangrulpir/43/92-93 before the Additional Collector. The Additional Collector Akola allowed that appeal by the judgment and order dated 15.01.1996. He held that respondent was in arrears of rent. He was habitual defaulter and the petitioner required the premises for his bonafide occupation after retirement. Therefore, on all the three grounds he granted the permission to issue quit notice. Of course on the point of arrears of rent, 2 months time was given to deposit the arrears, failing which the permission under Clause 13(3)(i) would be deemed to have been granted. The respondent, thereafter, filed review application No. BRA- 13(3)/Mangrulpir/25/1995-96 seeking review of the judgment dated 15.01.1996 passed in appeal. That application was dismissed in default on 29.06.1999. On 17.02.2000 respondent filed another application titled as Review Application whereby he sought review of the order dated 29.06.1999 about dismissal of the review application and sought restoration of the earlier review application. That application was allowed and the review application was restored to file and same was allowed by the Additional Collector by the impugned judgment and order dated 20.12.2000. In the impugned order the Additional Collector noted that mother of the petitioner was the landlady and the suit premises were recorded in the Municipal Record in the name of his brother Arvind. He could not produce any record to show that it was an ancestral and joint family property and he is the Karta of the family. On these grounds the Additional Collector found that the petitioner had no locus standi to file the application seeking permission to issue quit notice. This aspect was not considered in the judgment dated 15.01.1996 whereby the earlier appeal was allowed. In view of this judgment dated 15.01.1996 came to be set aside by the Additional Collector by the order dated 20.12.2000 passed in the review application and thus the order passed by the Rent Controller rejecting the application was restored. Hence this petition by the original applicant.

5. Heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioner vehemently contended that the appeal filed by the present petitioner was allowed on 15.01.1996. Review application under

Clause 21(2-a) could be filed within 90 days but in fact the review application was filed by respondent on 04.10.1996 and was barred by limitation. According to him the review application was liable to be rejected on the ground of delay itself. However, the impugned order does not reveal that any objection was taken on the point of delay. There is also no material before the Court to find whether any application or request was made for condonation of delay. As reviewing authority entertained the application, heard the parties on merits and decided against the petitioner, it can be inferred that impliedly the delay in filing review application was condoned. Therefore, I need not give much importance to this contention.

7. Learned Counsel for the petitioner also contended that on 17.02.2000 the respondent had filed second review application after first review application was dismissed in default on 29.06.1999. According to him under Clause 21(2-a) only one review application can be filed. As that was already dismissed, filing of second review application is not permissible under law. However, on perusal of the record and particularly the contents and the prayer in the second review application, I find that second review application was not against the judgment and order dated 15.01.1996. That was to review the order of dismissal of earlier review application in default and real prayer was to set aside that order of dismissal and to restore the original review application to record for hearing as per law and therefore in my considered opinion no objection can be taken to filing of the so called second review application. In fact, it was only an application for restoration of the review application which was dismissed in default. Learned Counsel contends that it was restored ex-parte. However that objection also cannot be taken into consideration now because after restoration of the original review application, a notice was issued to the petitioner and the petitioner was duly heard before that review application was allowed by the impugned order.

8. Learned Counsel for the petitioner vehemently contended that the scope of the review is very limited under Clause 21(2-a). According to him from the language of the impugned order it appears that reviewing authority was treating the review application as an appeal against the order passed on 15.01.1996 passed in appeal by the earlier Additional Collector. It is true that he used the word "Appeal" for "review application" and "Appellant" for the "review applicant". Merely because of this it can not be said that he treated it as an appeal. Under Clause 21(2-a) Collector has been vested with...power to review the order passed by himself or by his predecessors in office and pass such order as he thinks fit. Only condition is that he shall not vary or reverse the earlier order unless the notice has been given to the parties interested to appear and to be heard in support of such order.

9. It is now well settled that scope of the review application is very limited and while deciding the review, the reviewing authority can the review the order in appeal only if some important material or legal aspect, which was required to be considered, was not considered while deciding the appeal. In *Tukaram Nathuji*

Sonkusare v. Dayalnath Dudhanath Mishra 1985 MLJ 37, learned Single Judge of this Court observed that evidence cannot be re-appreciated in review nor different conclusion can be arrived at only because other view is possible. Learned Single Judge noted that in Vyankatesh Narayan v. Narhar Balkrishna 1957 NLJ 136, Full Bench of the Nagpur High Court had observed:

Review authority would do well to be slow to interfere with an order unless the error is patent on record and had occasioned manifest injustice.

In Vasu Vs. Saroja Ammal, , this Court had held that in deserving cases it is open to the reviewing authority to exercise review power, where gross errors of fact or facts are apparent on record. Review application can be considered in the light of this legal position.

10. After perusal of the record, I find that the Rent Controller had rejected the application of the present petitioner mainly on the ground that he had failed to prove that the suit premises was joint ancestral property and that he was Karta of the family. It was noted that his mother was landlady and afterwards his brother was recorded as owner of the property in the Municipal Record. He had not produced any document, power of attorney or any other authority to file application seeking permission to issue quit notice. Record reveals that in the judgment dated 15.01.1996 in appeal, the learned Additional Collector had not touched this issue and he allowed the appeal holding that the respondent was in arrears of rent, habitual defaulter and that the petitioner required the premises bonafide for his own occupation. Reviewing authority did not disturb any of these findings but allowed the review application on the ground that the petitioner had failed to prove that he was landlord or that he was Karta of the joint family and that the suit premises are the ancestral joint family property. This was very important aspect and this was not touched by the appellate authority and therefore the reviewing authority was within its powers to consider this aspect and pass the appropriate order in the interest of justice. Therefore, I am unable to accept the contention of the learned Counsel for the petitioner that the reviewing authority exceeded the powers and jurisdiction while passing the impugned order. On the contrary I find that manifest error in the judgment in appeal was corrected by the reviewing authority by passing the impugned order. Therefore, I find no substance in the present writ petition.

For the aforesaid reasons the petition stands dismissed.