
(2013) 06 BOM CK 0116
In the Bombay High Court
Case No : Writ Petition No. 8323 of 2012

Laxman Bhaguji Kawade

APPELLANT

Vs

Dnyaneshwar Krishnaji Takalkar and Others

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14, Order 6 Rule 15
Criminal Procedure Code, 1973 (CrPC) — Section 345, 346
Maharashtra Rent Control Act, 1999 — Section 19, 22, 23, 24, 24(3)
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2013) 4 ABR 1432 : (2014) 1 BomCR 134

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : A.M. Joshi, for the Appellant; Prafulla B. Shah, for the Respondent No. 1, for the Respondent

Judgement

S.C. Dharmadhikari, J.—Rule. Respondent No. 1 is the contesting Respondent. He and others are duly served. Mr. Shah is appearing on behalf of Respondent No. 1. By consent, Rule made returnable forthwith. The Petitioner has filed this Writ Petition challenging the order passed by the Competent Authority, Pune dated 19.07.2011 under which the only prayer clause (c) of the Application (Exhibit-1 in Misc. Application No. 5/2011) made by the Respondent No. 1 (Dnyaneshwar Takalkar) has been granted. That was an application made by him in the form of obstruction/objection to the eviction order passed by the Competent Authority dated 29.09.2007 in Application No. 25/2007.

2. A brief reference is required to be made to the facts so as to appreciate the arguments particularly of Mr. Joshi, learned counsel appearing for the Petitioner.

3. There is a immovable property which is a house property. That was initially owned by the Respondent No. 2. The Petitioner claims to have purchased the said property from the Respondent No. 2 under a registered sale deed executed on 24.11.2003. The Respondent No. 2 though, as claimed by the Petitioner,

transferred his right, title and interest in the property and made the Petitioner absolute owner thereof, but requested the Petitioner to allow him to occupy the premises as Licencee for a period of three years. The Petitioner accepted that request and the licence agreement came to be executed between the parties determining the licence fees and period. Since there was default committed by the Respondent No. 2 in payment of the licence fees and despite the default being brought to the notice of the Respondent No. 2 and asked to vacate the premises, she did not vacate the premises after a period of three years. Therefore, the Petitioner filed the Miscellaneous Application No. 25/2007 invoking Section 24 of the Maharashtra Rent Control Act, 1999 (for short "MRC Act") against the Respondent No. 2 for seeking her eviction. The said application was allowed on 29.09.2007 directing eviction of the Respondent No. 2 from the subject premises.

4. The Respondent No. 2 filed the Special Civil Suit No. 860/2007 praying for declaration that the sale deed executed in favour of the Petitioner be declared as null and void and prayed for injunction restraining the Petitioner from disturbing her possession. The Petitioner appeared in the suit and filed the Written Statement. That suit is still pending.

5. In the meanwhile, the order passed by the Competent Authority dated 29.09.2007 was challenged by the Respondent No. 2 in Revision Application being Revision Application No. 350/2007. That application was also rejected by the Commissioner, Pune Division, Pune by his order dated 08.09.2009. It is at this stage that the application was made before the competent authority by the Petitioner for enforcement of his order dated 29.09.2007 being Execution Application No. 9/2008. On that application, a warrant for possession was issued, but the eviction order was not enforced on account of pendency of the Revision Application. On dismissal of the Revision Application, the Respondent No. 2 challenged the same by filing a Writ Petition in this Court being Writ Petition No. 10222/2009. However, she withdrew the said Writ Petition on 08.02.2010. Another Writ Petition was filed being Writ Petition No. 16270/2010, which also was rejected by this Court on 28.07.2010.

6. In the meanwhile, the present Respondent No. 1, claiming to be third party, filed an application for objection (Exhibit-35) in the execution proceedings before the competent authority mentioning that he has purchased the subject property from the Respondent No. 2 on 08.03.2004. He, therefore, claimed ownership of the premises. An affidavit was filed by the Respondent No. 2 affirming the transaction with the Respondent No. 1.

7. The Respondent No. 1 filed one more application (Exhibit-53) on 21.12.2010 praying for setting aside the order dated 29.09.2007 passed in Misc. Application No. 25/2007. The Petitioner, on being served with this application, filed objection and raised a plea of jurisdiction of the competent authority as well.

8. The competent authority by order dated 24.03.2011 rejected two applications

(Exhibits-35 and 53) in the light of Section 24 of the MRC Act. He, therefore, decided to proceed and execute the possession warrant. However, his order dated 24.03.2011 was challenged by the Respondent No. 1 in Civil Revision Application No. 285/2011 in this Court. The learned Single Judge of this Court decided that Civil Revision Application on 15.04.2011 by the following order:-

1. Heard the learned counsel appearing on behalf of the applicant and respondent No. 1. Applicant is aggrieved by the judgment and order dated 24th March, 2011 passed by the Competent Authority.

2. Brief facts are as under-

Respondent No. 1 filed an application against respondent No. 2 under 24 of the Maharashtra Rent Control Act, 1999. The said application was allowed. Respondent No. 2 preferred an appeal against the said order. Her appeal, however, was rejected. Against the said order, she preferred writ petition in this Court, which was also dismissed in limini.

3. The applicant herein claims that he purchased the suit property from respondent No. 2 in the year 2004 and is, therefore, owner and in possession of the said property. He, therefore, filed an application before the Competent Authority in execution and prayed for rejection of the execution application, taken out by respondent No. 2 for setting aside the order dated 29th September, 2007, passed in Misc. Application No. 25 of 2007. The Competent Authority, however, rejected the said application, in view of the provisions of Section 24(3) of the Maharashtra Rent Control Act. It is contended by the learned counsel for the applicant that he being lawful owner, the Competent Authority could not have decided the title of the applicant in respect of the said property.

4. On the other hand, learned counsel for the respondent No. 1 submitted that a warrant of possession has been issued against the licensee and if the applicant has any claim in respect of the said property, he can always approach the competent forum. In my view, since the applicant claims to be owner of the said property, he will have to approach the competent forum; and secondly, the warrant of possession, admittedly, is not issued in his name. If, therefore, the decree is obstructed, the said obstruction will have to be decided in accordance with law. Two weeks time is given to the applicant to take appropriate steps for approaching the competent forum. Civil Revision Application is, therefore, disposed of in the aforesaid terms.

9. It is contention of Mr. Joshi that misinterpreting and misreading this order, the Respondent No. 1 filed another application on 29.04.2011 objecting to the execution and enforcement of the order of the competent authority and stating that this is an application in the form of obstruction/objection to the execution of possession warrant. On another application, namely, Misc. Application No. 5/2011, the Competent Authority passed an order staying the proceedings for execution and enforcement of the order passed by it in September, 2007 in favour of the present Petitioner. The Petitioner objected to the application, but

the competent authority has, by the impugned order dated 19.07.2011, stayed execution of the possession warrant till disposal of the Misc. Application No. 5/2011 stated to be certain objections/obstructions to the execution and enforcement of its order.

10. In the meanwhile, it is undisputed that the Respondent No. 1 has filed the Special Civil Suit No. 851/2011 against both the Respondent No. 2 and the present Petitioner and prayed for declaration of title in his favour. In such suit, an application (Exhibit-5) was filed in the Trial Court requesting it to grant an injunction against the parties to the suit from dispossessing the Respondent No. 1. That application for interim injunction was dismissed by the Trial Court. It is stated orally by Mr. Shah, learned counsel appearing for the Respondent No. 1, that a Miscellaneous Appeal has been filed challenging this order in the District Court at Pune and same is pending.

11. The only contention which has been raised before me by Mr. Joshi is that in the scheme of the MRC Act and particularly Section 24 thereof, so also, summary disposal of certain applications as provided by Chapter-VIII, there is nothing like an execution application which is required to be made, but the competent authority is empowered to evict any person, who is refusing to comply with the order of eviction made u/s 24 and while evicting that person from the premises by resorting to Section 43 of the MRC Act and delivering the same to the landlord, the competent authority is empowered to use such force as may be necessary. To enable the competent authority to exercise such powers, that an application was filed by the Petitioner. This was only to facilitate the competent authority to exercise its powers under the MRC Act. However, taking advantage of such application that the Respondent No. 1 raised several objections and termed the proceedings as if they are proceedings for execution and enforcement of a decree of the civil court. Such proceedings, therefore, by way of application presently made by the Respondent No. 1, are termed as objections/obstructions to the execution proceedings. In the scheme of the MRC Act, when specific powers are conferred in the competent authority for eviction from licensed premises and which are summary in nature, then, there is no scope for reading all this in the Act. The order passed by the learned Single Judge in this case cannot be said to be construing any provisions of law or enabling the Respondent No. 1 to raise objections or obstructions styling the proceedings as execution proceedings. In any event and alternatively, attention of the learned Single Judge was not invited to the scheme of the MRC Act. Mr. Joshi, therefore, prayed that the impugned order be set aside.

12. Mr. Shah has relied upon the order passed by Honourable Mr. Justice V.M. Kanade and has also relied on sections 46 and 47 of the MRC Act. He submits that the proceedings before the competent authority presently pending are in the nature of the execution proceedings and all obstructions and objections to the maintainability thereof can be raised. Today, the position is that the Respondent No. 1 has been conferred right, title and interest in the property by the

Respondent No. 2. The Respondent No. 2 does not accept the transaction with the present Petitioner. The Respondent No. 1 has been put in possession and therefore, he has every right to protect the same. It is not as if the civil suit is the only remedy available to him. For these reasons and when the objection and obstruction to the execution application has been fully heard by the learned competent authority and the final orders are likely to be passed in near future, that this Court should not interfere in its writ jurisdiction in the present proceedings. Mr. Shah, therefore, prays that the Writ Petition be dismissed.

13. With the assistance of Mr. Joshi and Mr. Shah, I have perused the Writ Petition and all annexures thereto. Both counsel have also invited my attention to the proceedings before the competent authority and powers conferred in him by the MRC Act.

14. It is common ground that Chapter-V of the MRC Act enacts special provisions for recovery of possession in certain cases. Section 23 enables the members of armed forces of the Union, scientists or their successor-in-interest to recover possession of the premises required for their occupation. By Section 24, the landlord is entitled to recover possession of the premises given on licence, on expiry. Section 24 reads as under:-

24. Landlord entitled to recover possession of premises given on licence on expiry.

(1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation-For the purposes of this section,-

(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

15. A bare perusal thereof would make it clear that the competent authority has been empowered to take cognizance of the application made by the landlord and pass an order of eviction of the licensee. Sub-section (3) of Section 24 clarifies that any claim of whatever nature from any other person who is not a licensee according to the agreement of licence, cannot be entertained particularly because the agreement of licence in writing shall be conclusive evidence of the fact stated therein.

16. In these circumstances when in substantive proceedings no claims of third parties could have been entertained, then, it is inconceivable that the law creates a situation whereby a person like the Respondent No. 1 can step in after the order of eviction is passed u/s 24, merely because ancillary proceedings in the form of application to enforce that order are pending before the competent authority.

17. If there is any doubt, Chapter-VIII fully clarifies the same. Chapter-VIII contains the provisions enabling the summary disposal of certain applications. Section 39 gives overriding effect to the said provisions and states that they shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. Section 40 provides for appointment of the competent authority. Then comes Section 41 which provides definition of the landlord for the purpose of Chapter VIII and which reads thus:-

41. Definition of landlord for the purpose of Chapter VIII. For the purposes of this Chapter, landlord means a landlord who is,-

- (a) a person who has created a service tenancy in respect of his premises or a part thereof in favour of his employee u/s 22;
- (b) a member of the armed forces of the Union or a scientist or a Government servant or a successor-in-interest, referred to in section 23; or
- (c) a person who has given premises on licence for residence or a successor-in-interest referred to in section 24.

18. Then comes Section 42 which reads as under:-

42. Special provisions for making application to Competent Authority by landlord to evict tenant or licensee.

Notwithstanding anything contained in this Act or any other law for the time being in force or any contract to the contrary or any judgment or decree or order of any court, but subject to the provisions of section, 22 or 23 or 24 as the case may, be; a landlord may submit an application to the Competent Authority, signed and verified in a manner provided in rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908, as if it were a plaint, to the Competent Authority having jurisdiction in the area in which the premises are

situated, for the purpose of recovery of possession of the premises from the tenant or licensee, as the case may be.

19. A bare perusal thereof would show that the applications made to the competent authority u/s 24 were to be signed and verified in terms of the procedure prescribed in Rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908 as if they were plaints.

20. Then comes Section 43 which reads as under:-

43. Special procedure for disposal of applications.

(1) Every application by a landlord under this Chapter for the recovery of possession shall be accompanied by such fees as may be prescribed. The Competent Authority shall deal with the application in accordance with the procedure laid down in this section.

(2) The Competent Authority shall issue summons in relation to every application referred to in sub-section (2) in the form specified in Schedule III.

(3) (a) The Competent Authority shall, in addition to, and simultaneously with; the issue of summons for service on the tenant or licensee, as the case may be, also direct the summons to be served by registered post, acknowledgement due, addressed to the tenant or the licensee or agent empowered by such tenant or licensee to accept the service at the place where the tenant or licensee or such agent actually and voluntarily resides or carries on business or personally works for gain;

(b) When an acknowledgment purporting to be signed by the tenant or licensee or their agent received by the Competent Authority or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or licensee or their agent had refused to take delivery of the registered article, the Competent Authority may proceed to hear and decide the application as if there has been a valid service of summons.

(4) (a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid;

(b) The Competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts

as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24;

(c) Where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application.

(5) The Competent Authority shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a court of small causes, including the recording of evidence.

21. A perusal thereof would indicate as to how there is a departure made by the Legislature intentionally and advisably so as not to equate the proceedings before the competent authority with a suit in the civil court. The provisions enable the competent authority to decide the matter expeditiously and summarily. This provision provides timely disposal of the proceedings for eviction of occupants occupying the premises as service tenancies and the premises belonging to the members of armed forces of the Union, scientists or their successor in interest. There is no relationship envisaged of a landlord and tenant, but purely of licensee and therefore, Section 24 is also included within Chapter-VIII.

22. Then comes two relevant provisions in the form of Sections 44 and 45, which read as under:-

44. 44. Order of Competent Authority to be non-appealable and revision by State Government.

(1) No appeal shall lie against an order for the recovery of possession of any premises made by the Competent Authority in accordance with the procedure specified in section 43.

(2) The State Government or such officer, not below the rank of an Additional Commissioner of a Revenue Division, as the State Government may, by general or special order, authorise in this behalf, may, at any time suo motu or on the application, of any person aggrieved, for the purposes of satisfying itself that an order made in any case by the Competent Authority u/s 43 is according to law, call for the record of that case and pass such order in respect thereto as it or he thinks fit:

Provided that, no such order shall be made except after giving the person affected, a reasonable opportunity of being heard in the matter:

Provided further that, no powers of revision at the instance of person aggrieved shall be exercised, unless an application is presented within ninety days of the date of the order sought to be revised.

45. Effect of refusal or failure to comply with order of eviction.

If any person refuses or fails to comply with the order of eviction made u/s 43 within thirty days of the date on which it has become final, the Competent Authority or any other officer duly authorised by the Competent Authority in this behalf, may evict that person from, and take possession of, the premises and deliver the same to the landlord and for that purpose, use such force as may be necessary.

23. A bare perusal of these provisions would indicate as to how the Legislature gave the proceedings special and exclusive by not making the orders of the competent authority appealable, but subject to the revisional jurisdiction of the State Government and that is clarified by Section 44(1). By Section 45, the competent authority has been given powers to enforce its own orders by using force so that the landlord can be given possession of the premises immediately.

24. Section 46 provides for the pending suits and proceedings in the courts and states that even the pending proceedings could be brought before the competent authority by withdrawing them from the civil courts or other courts. Then comes Section 47 which enacts bar of jurisdiction and reads thus:-

47. Bar of jurisdiction.

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Competent Authority or the State Government or an officer authorised by it is empowered by or under this Act, to decide, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power so conferred on the Competent Authority or the State Government or such Officer.

25. Then Section 19 has been made applicable with some modifications to the provisions under Chapter-VIII by virtue of Section 48. Sections 49, 50, 51 and equally 52 should be seen as giving protection to the competent authority and also making all proceedings before the competent authority judicial proceedings for the purposes of Sections 193 and 228 of the Indian Penal Code. The Competent Authority shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

26. A harmonious reading of the provisions contained in Chapters-V and VIII would make it clear that these provisions read together enact a scheme so as to enable all those persons who have been included in Chapter-VIII and particularly in Sections 42 and 43, to recover possession of the premises let out by them for service occupancy or while they were posted in armed forces. These are cases where persons in armed forces or Government service let out their own private property and move or shift into official accommodations during the course of their postings and transfers in service. Such persons, who are rendering public services, have been given special status so that their applications for eviction and recovery of possession of their premises are dealt with summarily and expeditiously so as not to cause inconvenience to them. Equally, taking note of the large number of leave and licence agreements executed in relation to the

flats and immovable properties in Maharashtra, that the Legislature stepped in and made provisions enabling the licensor/landlord to recover possession. It would be complete mockery of these proceedings if Order XXI of the Code of Civil Procedure, 1908 or styled as execution or proceedings to recover possession in pursuance of a decree of possession passed by a ordinary civil court, is to be read into the above Chapters. If complete procedure and substantive powers under Order XXI of the Code of Civil Procedure, 1908 and prior thereto of a trial of the civil suits have been excluded so as to ensure speedy disposal of the above cases and applications, then, by indirect or oblique method the same cannot be read into Chapters V and VIII of the MRC Act.

27. There is a clear attempt made by the Respondent No. 1 in this case to stall the execution and enforcement of the orders of the competent authority. When the Respondent No. 1 is aware that the substantive rights claimed by him in the immovable property can be enforced only by approaching a competent civil court and he has indeed approached the same, then, there was no scope for moving any obstruction/objection in the application moved by the Petitioner seeking enforcement of the order passed in his favour. The very attempt of the Respondent No. 1 shows lack of bonafides on his part. He has taken advantage of certain observations in the order of the learned Single Judge which are being read out of context and in isolation. The order read as a whole dismisses the Civil Revision Application. Once that is the ultimate conclusion, then, the learned Single Judge could not have granted any liberty to raise the very issues before the competent authority by making any application styled as objection/obstruction to the execution or enforcement of the order of the competent authority dated 29.09.2007. The learned Single Judge clearly had, in his mind, the substantive proceedings which the Respondent No. 1 was required to institute and proceed with.

28. In such circumstances no order of a Court of law and at least of the highest court, can be seen as contravening any statutory provisions or a law of competent legislature. Therefore, it must be held that the present application, which is styled as Misc. Application No. 5/2011, could not have been entertained by the competent authority. Once it could not have been entertained, no orders of the nature made and impugned in this Writ Petition could have been passed thereon, by the competent authority. The orders passed are ex-facie illegal and vitiated by total non application of mind. They are completely perverse as they permit the Respondent No. 1 to rely upon some stray observations in the order of the learned Single Judge of this Court.

29. For all these reasons, the proceedings by way of Misc. Application No. 5/2011 pending before the competent authority are quashed and equally the orders passed thereon and impugned in this Writ Petition. Both of them stand quashed and set aside. The Writ Petition is allowed in these terms. Rule made absolute accordingly. No costs.

30. At this stage, Mr. Shah, learned counsel appearing for the Respondent No. 1,

prays that for a period of four weeks from today, the competent authority be directed not to dispossess the Respondent No. 1 and this is to enable the Respondent No. 1 to proceed with the pending appeal before the District Court and seek appropriate orders therein.

31. This request is not seriously opposed by Mr. Joshi. In view of this, it is directed that the competent authority may not dispossess the Respondent No. 1 from the premises in question for a period of four weeks from today. Needless to clarify that this order does not mean that the Petitioner cannot resist the suits filed by the Respondent Nos. 1 and 2 and equally the Respondent Nos. 1 and 2 cannot proceed with them in accordance with law. This order will also not influence the courts seized of such proceedings including the District Court who shall decide the suits and proceedings pending before them on merits and in accordance with law.