
(2011) 10 BOM CK 0142
In the Bombay High Court
Case No : Writ Petition No. 2116 of 2011

M.N. Ranade

APPELLANT

Vs

Bank of Maharashtra

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3

Citation : (2012) 2 ALLMR 470 : (2012) 3 BomCR 385 : (2012) 114 BOMLR 147 : (2012) 1 MhLj 464 : (2012) 2 RCR(Rent) 180

Hon'ble Judges : R.M. Savant, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : Seema Sarnaik instructed by Mr. H.J. Kandalkar, for the Appellant; Karl K. Shroff a/w Mr. Jayesh Desai and Mr. Pranay Rajput instructed by y Singhi and Co., for the respondent No. 1, for the Respondent

Judgement

P.B. Majmudar, J.—Rule. Mr. Shroff waives service of notice on behalf of respondent No. 1. The respondent No. 2 though served, has not appeared. The affidavit of service qua respondent No. 2 may be filed latest by tomorrow. Even otherwise, the respondent No. 2 is an Estate Officer of respondent No. 1 Bank and the main contesting party is the respondent No. 1, which is a Nationalized Bank. With the consent of the learned Advocates appearing in the matter, rule is made returnable forthwith and heard.

2. By way of this petition, the petitioner has challenged the order passed by the City Civil Court, Greater Mumbai, dated 12-10-2011 by which the restoration application submitted by the petitioner applicant bearing No. 59 of 2011, which was filed for restoring the main proceedings i.e. Miscellaneous Appeal No. 5 of 2010, is dismissed. The petitioner herein had challenged the order passed by the Estate Officer appointed u/s 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, dated 27-01-2010 in Eviction Case No. 1 of 2007. The said eviction order was challenged by the petitioner by way of Miscellaneous Appeal No. 5 of 2010. At the time of filing of the appeal, the petitioner preferred

an interim application for stay and the learned Judge of the City Civil Court passed an expert order staying the order passed in Eviction Case No. 1 of 2007. Thereafter, the appeal of the petitioner was dismissed for default as none was present for the petitioner. The petitioner thereafter, preferred an application for setting aside the order of dismissal by way of preferring the Miscellaneous Application No. 59 of 2011. The prayer was made to restore the Miscellaneous Appeal No. 5 of 2010 by stating various grounds. The learned Judge found that the grounds mentioned by the petitioner herein for restoring the Appeal, do not inspire confidence. It was found that on perusing the Rozanama, the petitioner and his Advocate are consistently remained absent since 14032011 and even subsequent dates thereafter. It was observed that the Advocate on record is expected to shoulder his responsibility and it is not open to him now to say that the petitioner/appellant is 85 years of age and he is ill. There is no documentary evidence produced on record about the sickness of the appellant/petitioner. The learned Judge of the City Civil Court held that the ad interim order was obtained without giving notice to the other side and behind the back of the respondents. Considering the aforesaid aspects, the appeal of the petitioner was dismissed. The said order was challenged by the petitioner by way of the present petition.

3. The learned counsel for the petitioner submits that the ad interim order was obtained in an appropriate manner and though, attempts were made to serve the other side, the petitioner could not succeed in serving notices to the other side and in view of the urgency, the learned Judge after satisfying himself and looking to the urgency, had granted ad interim order. It is submitted that for restoring the matter, it was not open to the learned Judge to consider as to whether the ad interim order was obtained appropriately or not, as she was required to consider only the aspect regarding restoring the appeal which was dismissed for default. She further submits that if the appeal is restored, the petitioner undertakes before this Court that no adjournment will be sought for and the petitioner's Advocate will argue the matter as and when it is listed for hearing.

4. The learned counsel for the respondent Bank submitted that the aspect as to whether the Miscellaneous Appeal should be restored or not is left to the Court and the Bank would not like to contest the petition by saying that the real issue involved in the appeal should be examined on merits. In short, the learned counsel for the respondent Bank has left this aspect for the consideration of this Court.

5. We have heard the learned counsel for the petitioner and the respondent No. 1 Bank. It is required to be noted that at the time of deciding the application for restoration, the learned Judge of the City Civil Court was not expected to advert to the earlier order passed by his Predecessor Judge and to find out as to whether such order was obtained fraudulently or not. In case, the appeal of the petitioner was required to be heard on merits, the said aspect was not relevant. Similarly, for considering the restoration application, the said aspect was not required to be dealt with by the learned Judge. Regarding nonproduction of

medical evidence, it is not in dispute that the petitioner is 85 years of old. Simply because medical certificate is not produced, one cannot presume that the ground of illness is false. As a person of that age may feel that he would not be in a position to travel. Insistence of medical evidence is not warranted as there are cases where a false medical certificates are produced for seeking condonation of delay and for pressing other reliefs. Insistence of medical certificate in the facts and circumstances of this case, cannot be said to be a requirement of law as ultimately it is for the concerned Court to consider whether the grounds mentioned are genuine or not. In any case, in our view, the learned Judge has taken a very harsh view in not restoring the appeal of the petitioner, as taking too harsh view of the matter may sometime result into miscarriage of justice. Instead the learned Judge should have granted last opportunity to the petitioner to proceed with the case, as the ultimate sufferer is a litigant who is waiting adjudication of his case for many years.

6. In view of what is stated above, the impugned order dated 12-10-2011 are set aside and the Miscellaneous Application No. 59 of 2011 is allowed. The Miscellaneous Appeal of the petitioner bearing No. 5 of 2010 stands restored to the file. The learned counsel for the petitioner has assured the Court that the concerned Advocate will not ask for any adjournment in whatsoever nature and he will proceed with the matter as and when it is notified for hearing. It is clarified that in spite of this assurance, if the concerned Advocate for the petitioner/appellant is not present to argue the matter, the learned Judge shall be free to decide the Miscellaneous Appeal of the petitioner, for which the petitioner will not have any cause in this behalf. The Miscellaneous Appeal of the petitioner may be decided expeditiously and in any case within a period of three months from date.

7. Rule is accordingly made absolute in the above terms with parties to bear their respective costs.