

(2011) 04 BOM CK 0045
In the Bombay High Court
Case No : Writ Petition No. 101 of 2011

Mr. Ramchandra B. Bhatkar	Vs	APPELLANT
Agencia Real Trading and Marketing Pvt. Ltd.		RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 74, 75
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 22, 23, 46

Citation : (2011) 5 ALLMR 194 : (2011) 3 BomCR 674 : (2011) 6 MhLj 264

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : F.E. Noronha, for the Appellant; J. Coelho Pereira and S. Karpe, for the Respondent

Judgement

A.P. Lavande, J.—Heard learned Counsel for the parties. Rule. By consent of the learned Counsel heard forthwith.

2. By this petition under Article 227 of the Constitution of India, the Petitioner challenges order dated 11/2/2011 passed by the Administrative Tribunal in Revision application No. 1/2011.

3. Briefly the facts leading to filing of the present petition are as under:

The Petitioner herein filed application u/s 22 and 23 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 ("The Act" for short) seeking eviction against the Respondent from the premises leased to the Respondent.

4. In the course of the evidence, the Petitioner produced certificate dated 9/7/2008 issued by Dr. Zelio D'Mello, Associate Professor, Department of Orthopaedic & Surgery, Goa Medical College, Bambolim-Goa which was admitted in evidence. Before closing the evidence on behalf of the Petitioner, the Petitioner

filed an application dated 24/9/2010 seeking to produce certificate dated 1/9/2010 issued by the very same doctor. Respondent objected to the said application. By order dated 8/12/2010, the Additional Deputy Collector (HQ) & Rent Controller, Panaji allowed the application holding that the said certificate was a public document and that no prejudice would be caused to the Respondent if the Petitioner is allowed to produce the said certificate in addition to the earlier certificate dated 9/7/2008 as the Respondent would get an opportunity to cross examine the witness on the said document.

5. Against the said order, the Respondent herein preferred revision application which has been allowed by the impugned judgment and order dated 11/2/2011.

6. Mr. Noronha, learned Counsel appearing for the Petitioner submitted that the Tribunal has erred in exercising revisional jurisdiction u/s 46 of the Act in as much as no exceptional circumstances existed warranting exercise of revisional jurisdiction u/s 46 of the said Act. Mr. Noronha further submitted that in the absence of exceptional circumstances, the Tribunal could not have exercised revisional jurisdiction and set aside the order dated 8/12/2010 passed by the Additional Rent Controller. According to the learned Counsel the reasons given by the Tribunal for setting aside the impugned order are patently unsustainable in law. Mr. Noronha further urged that the Tribunal after holding that the Petitioner is entitled to examine Dr. Zelio D'Mello erred in holding that the Appellant/Petitioner is not entitled to produce the said document.

In support of his submissions, Mr. Noronha placed reliance upon the following judgments:

i) Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc.,

ii) Carona Ltd. Vs. Parvathy Swaminathan and Sons,

7. Per contra, Mr. Coelho Pereira, learned Senior Counsel appearing for the Respondent submitted that the Petitioner has not made out any case for interference with the impugned judgment and order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. According to learned Counsel jurisdiction under Article 227 of the Constitution is limited to ensure that the lower Courts and Tribunals function within the bounds of their authority and having regard to the limited nature of the jurisdiction no interference is warranted with the impugned judgment and order passed by the Administrative Tribunal. According to the learned Counsel the reasons given by the Tribunal for setting aside the order passed by the Additional Rent Controller cannot be said to be patently perverse or illegal warranting interference in exercise of supervisory jurisdiction of this Court.

8. Before dealing with the rival submissions, I deem it appropriate to deal with the authorities relied upon by Mr. Noronha in support of his submissions.

In the case of Ramesh Chandra Sankla (supra) the Apex Court in paragraphs 68 and 69 observed thus:

68. A "jurisdictional fact" is one on the existence of which depends the jurisdiction of a court, tribunal or an authority. If the jurisdictional fact does not exist, the court or tribunal cannot act. If an inferior court or tribunal wrongly assumes the existence of such fact, a writ of certiorari lies. The underlying principle is that by erroneously assuming existence of jurisdictional fact, a subordinate court or an inferior tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.

69. The counsel referred to a recent decision of this Court in Arun Kumar V. Union of India. Speaking for the court, one of us (C.K. Thakker, J) observed: (SCC p.758, para 74)

74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

9. In the case of Carona Ltd. (supra), in para 28, the Apex Court quoted Halsbury's Laws of England (4th Edn.), Vol. Para 55,p.61, Reissue,vol. 1(1), para 68, pp 114-15, which read thus:

Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue, but that ruling is not conclusive.

The existence of a jurisdictional fact is thus a sine qua non or condition precedent to the assumption of jurisdiction by a court or tribunal.

10. Placing reliance upon the aforesaid judgments, Mr. Norohna argued that only unless exceptional circumstances existed the Tribunal had no jurisdiction to interfere with the order passed by the Additional Rent Controller in exercise of its discretion permitting the Appellant to produce the medical certificate dated 1/9/2010.

11. Perusal of the impugned order discloses that the Tribunal has reversed the order passed by the Additional Rent Controller on the following grounds:

i) Although certificate dated 1/9/2010 is a public document, it is not necessary for the Appellant to produce the same since he is going to examine the author of the certificate i.e. Dr. Zelio D"Mello.

ii) The Appellant has already been examined and production of the document at this stage would cause serious prejudice to the Respondent.

iii) The Appellant had already produced certificate dated 9/7/2008 and as such, it was not necessary for the Appellant to produce the certificate dated 1/9/2010.

12. The first question which arises for consideration is whether exceptional circumstances existed so as to clothe the Tribunal with revisional jurisdiction u/s 46 of the Act. The next question which arises for consideration is whether this Court should exercise jurisdiction under Article 227 against the order passed by the Tribunal.

13. In the case of Ramesh Chandra Sankla (supra), the Apex Court has held that jurisdiction of this Court under Articles 226 and 227 is discretionary and equitable and are to be exercised in the larger interest of justice. While granting relief in favour of the party, the Court must take into account the balancing of interest and equities. It can mould relief considering the facts of the case. The court must also consider whether public interest would be served.

14. If the impugned judgment and order passed by the Tribunal is tested on the touchstone of the above principles, I find that the impugned order cannot be sustained. u/s 46 of the Act the Tribunal can

15. I am of the considered opinion that in the present case no exceptional circumstance existed for the Tribunal to exercise revisional jurisdiction. Once the statute prescribes the limit within which the Tribunal should exercise its jurisdiction, the Tribunal cannot transgress the limit and exercise the said jurisdiction. It is pertinent to note that nowhere the Tribunal has observed that exceptional circumstances exist which warrant exercise of revisional jurisdiction against the order passed by the Additional Rent Controller. I, therefore, find merit in the submission of Mr. Noronha that in the absence of exceptional circumstance which would only give jurisdiction to the Tribunal, the Tribunal could not have exercised revisional jurisdiction against the impugned order. In my opinion, the ratio laid down by the Apex Court in the aforesaid judgments is squarely applicable in the present case.

16. I find that the reasons given by the Tribunal for allowing the revisional application are patently unsustainable in law. The finding of the Tribunal as well as the Additional Rent Controller that the certificate dated 1/9/2010 is a public document is unsustainable in law. Bare perusal of Sections 74 and 75 of the Evidence Act discloses that a certificate issued by the doctor of Goa Medical College cannot said be termed as public document. The Tribunal has further held that since the Appellant is permitted to examine Dr. Zelio D'Mello, no purpose would be served in allowing production of the said certificate. I find it difficult to understand the reasoning of the Tribunal while giving this finding. The document sought to be produced by itself could not be treated as substantive evidence and the deposition of the doctor would be substantive evidence and production of the certificate would only corroborate the oral evidence by way of contemporaneous

record. Therefore, there is fallacy in the reasoning of the Tribunal that although the Petitioner would have opportunity to examine the Doctor, the Petitioner is not entitled to produce certificate dated 1/9/2010. The next ground on which the Tribunal has held against the Petitioner is that the Appellant would not get opportunity to cross examine the witness. I also do not find any merit in the said ground . It is for the doctor who has examined the applicant's son to depose about the health condition of the Petitioner's son. Therefore, the reasons given by the Tribunal for rejection of production of the document cannot be sustained. The Additional Rent Controller was justified in holding that the Respondent will have an opportunity to cross examine the doctor in support of the Appellant's case if he is allowed to produce the said certificate although the finding given by him that the certificate was a public document is not legally sustainable. In my opinion, no prejudice would be caused to the Respondent because the doctor can be cross examined by the Respondent on the basis of what is stated in the certificate. I am of the considered opinion that the impugned order discloses total non-application of mind by the Tribunal. The Tribunal ought not to have interfered with the order passed by the Additional Rent Controller by which only an opportunity was given to the Petitioner to prove his case that his son was 100 percent disabled. No doubt, the Petitioner had produced certificate dated 9/7/2008 which also discloses that the son of the Appellant/Petitioner was suffering from cerebral palsy with microcephally saastic quadriplegai with multiple contractures in upper and lower limbs having 100 per cent disability. However, by seeking for production of certificate dated 1/9/2010, the Appellant/Petitioner was seeking to establish that even on the said date i.e. 1/9/2010 the disability continued. This being the position, the Tribunal has clearly erred in reversing the order passed by the Additional Rent Controller by which an opportunity was given for production of the document to the Petitioner. No doubt, as rightly submitted by Mr. Coelho Pereira, learned Counsel for the Respondent jurisdiction of this Court under Article 227 is limited but the fact remains that the same has to be exercised to advance cause of justice. Therefore, I am of the considered opinion that this is a fit case for exercise of jurisdiction under Article 227.

17. In view of the above discussion, I am of the opinion that the impugned judgment and order is liable to be quashed and set aside and is hereby quashed and set aside. However, considering that the application for amendment was made at a late stage, the Respondent deserves to be compensated by awarding costs, which quantify at Rs. 750/- (Rupees seven hundred fifty only).The Petitioner shall deposit the costs of Rs. 750/- before the Rent Controller within a period of three weeks. Liberty to the Respondent to withdraw the same after they are deposited.

18. Rule is made absolute in the aforesaid terms.