
(2019) 11 BOM CK 0034

In the Bombay High Court

Case No : Letters Patent Appeal No. 273 Of 2006 In Writ Petition No. 603 Of 2006 (D)

Rajabhau

APPELLANT

Vs

Divisional Railway Managar And Ors

RESPONDENT

Date of Decision : 06-11-2019

Acts Referred:

Public Premises (Eviction Of Unauthorized Occupant) Act, 1971 — Section 4(1), 5, 5(1), 5B, 5C, 7, 9(1), 9(2)
Limitation Act, 1963 — Section 5

Citation : (2019) 11 BOM CK 0034

Hon'ble Judges : R.K. Deshpande, J; Milind N. Jadhav, J

Bench : Division Bench

Advocate : J.K. Matala, P.S. Lambat

Final Decision : Dismissed

Judgement

Milind N. Jadhav, J

1. Heard the learned counsel appearing on behalf of the respective parties.

2. The challenge in the present Letters Patent Appeal is to order dated 26.09.2006 passed by the learned Single Judge in Writ Petition No. 603/2006, interalia, upholding the order dated 28.01.1998 passed by the 9th Additional District Judge, Nagpur i.e. the Appellate Authority in Misc. Civil Application No. 559/1996. This application was filed by the Appellant for seeking condonation of delay of 2 years 7 months and 3 days i.e. total 946 days in filing the statutory appeal under Section 9(1) of the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 (in short "the Eviction Act") against the order dated 27.12.1993 passed by the Estate Officer. By order dated 27.12.1993, the Appellant was directed to be evicted from the plot which was allotted to him on licence and called upon to pay accumulated arrears of licence fee amounting to Rs. 7,39,793/-along with interest @ 12% per annum. This order was preceded by the statutory Notice issued to the Appellant under Section 4(1) of the Eviction

Act.

3. The Appellant has been allotted Plot No. 8 at Great Nag Road, Nagpur on licence for commercial purposes on payment of licence fee by the Respondents-Railways. The contention of the Appellant is that he was never served with the copy of statutory notice and the order of eviction dated 27.12.1993 and as such he had no knowledge of the same. According to the Appellant he came to know about the same in the year 1996 i.e. three years later. Therefore, there was a delay of 946 days in filing the appeal. The Appellant contended that licence fee was enhanced from Rs. 3,810/- per annum to Rs. 9,110/- per annum from 01.01.1986 and subsequently to Rs. 21,742/- per annum from 01.01.1992 and only after he got knowledge of the statutory notice as well as order of eviction, he rushed to the Court for the filing the statutory appeal. However, since the appeal was time barred, he filed application for condonation of delay bearing Misc. Civil Application No. 559/1996 before the 9th Additional District Judge, Nagpur. Hence, the limited question raised before us is whether the Appellant has proven that there were valid reasons given for condonation of delay in filing the statutory appeal as contemplated under the Eviction Act.

4. Shri J. K. Matale, learned counsel appearing for the Appellant submitted that the impugned order dated 26.09.2006 passed by the learned Single Judge did not taken into account the settled principle of law that while considering any application for seeking condonation of delay, the Court needed to adopt a liberal approach which has been laid down in a catena of judgments. He submitted that the reasons given by the Appellant for not filing the statutory appeal against the action of eviction before the Estate Officer were valid in as much as the Appellant was genuinely prosecuting proceedings relating to challenging the enhancement of licence fees by the Railways. He submitted that the Appellant did not have any knowledge whatsoever of the eviction proceedings and it was only on 19.08.1996 that the Appellant got knowledge about the eviction proceedings. He submitted that since the Appellant got knowledge about eviction proceedings, the Appellant rushed to the Appellate Court and filed the statutory appeal. He submitted that immediately after passing of the order dated 28.01.1998, the Appellate filed C.R.A. No. 199/1998 in this Court. In this C.R.A., the Respondents were restrained from taking possession of the said plot. However, on 17.11.2006, the C.R.A. came to be dismissed. He submitted that the Appellant had already paid the entire demand amount of Rs. 7,39,793/- to the Respondents and was continuing in possession of the said Plot No. 8 even as on date. He submitted that considering these aspects it was incumbent upon the Court to believe that the Appellant was genuinely prosecuting alternate remedy because of which he could not file the statutory appeal in time as contemplated by the provisions of the Eviction Act.

5. The learned District Judge/Appellate Court considered the Appellant's submission and passed a reasoned and speaking order after framing a specific issue as to whether the Appellant had proved sufficient cause for delay in filing

the appeal. The application came to be dismissed on multiple grounds, viz. on the ground of delay of 946 days which was not explained by the Appellant, that the delay was deliberate and lastly sufficient cause was not shown by the Appellant. The learned Judge concluded that the Appellant was aware of the eviction proceedings as he was prosecuting the challenge to enhancement of licence fees in Writ Petition No. 3467/1993 in the High Court and therefore rejected the plea of condonation of delay.

6. The learned Single Judge of this Court after considering the record of the case and pleadings filed before the Appellate Court considered the contentions of the Appellant that he was not aware of the eviction proceedings and recorded a specific finding which goes to the root of the matter.

7. We need to point out the provisions of Section 9(1) and (2) of the Eviction Act which reads thus:-

"9. Appeals.-(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 5-B or section 5-C or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred,-

(a) in the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section (1) of that section;

(b) in the case of an appeal from an order under section 5-B or section 7, within twelve days, from the date on which the order is communicated to the Appellant; and

(c) in the case of an appeal from an order under section 5-C, within twelve days from the date of such order:

Provided that the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time."

8. We shall emphasis on the proviso contained in Sub-clause (2) of Section 9 of the Eviction Act, which relates to entertainment of appeal in exceptional cases after expiry of the period of limitation only if the Appellate Authority is satisfied for the reasons to be recorded in writing that there were compelling reasons which prevented the person from filing the appeal in time.

9. On a bare reading of the proviso to sub-Section (2) of Section (9) of the Eviction Act, it is clear that though the power has been provided to the Appellate Authroity to entertain the appeal in exceptional cases after expiry of the period of limitation, the said power is subject to satisfaction of the reasons to be recorded

in writing that there were compelling reasons which prevented the Appellant from filing the appeal in time. What is important to be noted is that the said power for condonation of delay is not to be equated with or same as that of "sufficient cause" required to be shown by the Appellant as contemplated by the provisions of the Indian Limitation Act, 1963. The aforesaid provision is a much stricter and stringent provision in as much as condonation can be granted for entertaining the appeal in exceptional cases only and further the Appellate Officer is required to record compelling reasons in writing. The expression/words "sufficient cause" as appearing in Section 5 of the Indian Limitation Act, 1963 do not appear in the proviso, therefore, the submissions made by the Appellant that the delay of 2 years 7 months 3 days i.e. 946 days ought to have been condoned liberally cannot be considered in the light of specific statutory requirement.

10. The order dated 28.01.1998 passed by the Appellate Authority clearly records that the Appellant had knowledge about the order of eviction dated 27.01.1993 passed by the Estate Officer as the Appellant had refused to accept service of statutory notice issued under Section 4(1) of the Eviction Act and had refused to renew the licence irrespective of repeated requests made by the Respondents and did not pay the enhanced licence fees. The Appellate Authority framed the following issue and gave multiple reasons while negating it:-

"1) Whether the applicant proves that there is A sufficient reason for condonation of delay In filing the present appeal ?"

The aforesaid issue was answered in the negative by the Appellate Authority with the following findings which are given in paragraph nos. 5, 6 and 7 of the said order and are reproduced below:-

"5) Heard Mr. Anthony learned counsel for the applicant and Shri Ghatpande advocate for the respondent. It is not disputed that the applicant has filed writ petition in the month of Dec. 93 challenging the enhancement of payment of license fee. It is also not disputed that the respondent appeared in the said proceeding the producing the document that is eviction order passed under section 5(1) of the Act. On 27-12-1993 by the Estate Officer. The present appeal is filed by the applicant on 28-8-96 which is time barred by two years seven months and three days. The contention of applicant that the order of eviction was not within his knowledge and he for the first time came to know when the document is produced by the respondent in writ petition. The contention of applicant cannot be accepted for the reason that the applicant was knowing the order of eviction. It is to be noted that in the said writ petition the applicant has also prayed that the respondent be restrained from taking any action against the petitioner for evicting from the plot in question. It means the applicant was apprehending about passing of the proposed order of eviction u/s 5(1) of the Act. The respondent has categorically stated in the say that notice u/s 4(1) as well as order u/s 5(1) of the Act is not accepted by the applicant. It means the applicant has refused to accept the show cause notice as well as final order of eviction and challenged the enhancement in payment of license fee. The contention of

applicant that inspite of repeated requests the order of eviction is no given to him also cannot be accepted when he himself has refused to accept the same.

6) Mr. Anthony learned counsel for the applicant has submitted that the authority has not supplied the certified copy of eviction order and there is a sufficient cause for filling the appeal. Therefore the same may be condoned. In support of his submission he relied upon the authority reported in 1987 SC-1553 Collector Land Acquisition Anant Nag. & Another Vs. Mrs. Katiji and others. Having gone through the above ruling their Lordships of Apex Court have observed while condoning the delay court should adopt liberal approach and the reasons for such approach are also stated by their Lordships. The above ratio is not made applicable to the present case for the simple reason that the applicant having knowledge of eviction order refused to accept the order and tries to get benefit by lodging appeal at belated stage. The applicant has challenged the order of eviction after three years and some period and protected his possession. Delay is not properly explained, on the contrary it is deliberately caused and he is not entitled for condonation. The above ruling therefore not helpful to the applicant.

7) Considering the submission of the respective sides and I am of the opinion that no sufficient reasons are shown by the applicant for condonation of delay. The delay is more than three years/ the applicant is aware of the eviction order and not preferred any appeal within time. On the contrary the delay seems to be deliberate. Therefore the applicant is not entitled for any condonation of same. Application is devoid of merit and liable to be rejected. Hence, answer point No. 1 in the negative and I pass the following order :-

ORDER

The application is hereby rejected with costs."

11. On going through the proceedings, we find that the Appellate Authority below while passing the order dated 28.01.1998 has given three specific reasons which prove that the Appellant was aware of the eviction proceedings initiated by the Respondents i.e. Railways against him, as also the statutory notice served upon the Appellant as the Appellant was prosecuting companion Writ Petition No. 3467/1993. This was a separate Writ Petition filed by the Appellant in this Court to challenge enhancement of licence fee and thus the conclusion specifically recorded by the Appellate Court below was upheld by the learned Single Judge of this Court.

12. The learned Single Judge while dealing with the aforesaid order has given the following findings:-

"The petitioner has contented that he was now aware of the orders dated 27.12.1993 and he got knowledge of those orders for the first time on 18.08.1996. This contention is considered by the lower appellate Court and it has found that in Writ Petition itself there was a prayer for restraining the respondents from evicting him. It has therefore refused to accept the story and

has not condoned the delay. This order was then challenged in Civil Revision Application No. 199 of 1998 and the Civil Revision Application was dismissed in default on 17.11.2005 when it was found that nobody was appearing for revision applicant and it was also noticed that revision was not maintainable. After that dismissal of Civil Revision Application, the present writ petition has been filed."

Thus, it was categorically stated by both the Authorities below that the Appellant was fully aware about the eviction proceedings, since in the Writ Petition which was filed in 1993, there was a specific prayer for restraining the Respondents i.e. Railways from evicting the Appellant. Further, the fact that the Appellant had refused to accept the statutory notice under Section 4(1) of the Eviction Act also goes against the Appellant.

13. We find that in so far as the two orders viz. (i) order dated 28.01.1998 passed by 9th Additional District Judge, Nagpur and (ii) order dated 26.09.2006 passed by the learned Single Judge in Writ Petition No. 603/2006 are concerned, the same have been correctly passed and both orders are required to be upheld and the conclusion arrived at by the Courts below is correct and cannot be disturbed. Hence, we find no reason to disturb or set aside the order passed by the Appellate Court and the learned Single Judge below.

14. In view of above, we confirm the order passed by learned Single Judge and Letters Patent Appeal is dismissed. Parties to bear their own costs.

15. At this stage, learned counsel appearing for the Appellant seeks stay to this order.

16. Considering that the Appellant was protected by an interim order of this Court and the Appellant being in possession of the said plot, this order is stayed for a period of eight weeks to enable the Appellant to approach the superior Court.