

(2007) 10 BOM CK 0144

In the Bombay High Court

Case No : Civil Application No. 2531 of 2007 in Writ Petition No. 2882 of 1984

Shantabai Ramlal Pardeshi since deceased by her heirs
Jayashree R. Pardeshi and others

APPELLANT

Vs

Umabai Vishwanath Deshmukh since deceased by heirs
Vishwas Vishwanath Deshmukh and others

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 6 BomCR 485 : (2008) 2 MhLj 422

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : A.M. Joshi, for the Appellant; P.S. Dani with Mrs. Sharvari Kanitkar, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—This is an application for restoration of the writ petition which was dismissed for want of prosecution on 12(2) was not sent. Thus, this being the 3 of the application, the writ petition is restored to the file. Writ Petition is taken up for hearing.

2. The Petitioner is challenging judgment and order passed by the IIIrd Additional Judge, Small Causes Court, Pune, in Civil Suit No. 1776/1977 whereby the suit filed by the Respondent for recovery of the premises which were given on lease to the Petitioner was decreed on the ground that the Petitioner was a defaulter within the meaning of Section 12(3)(a) and decree for eviction was passed by the trial Court. The Petitioner had challenged this judgment and decree by filing an appeal before the District Judge, Pune. The District Judge, confirmed the order of the trial Court and dismissed the appeal of the Petitioner. Being aggrieved by the aforesaid order, the Petitioner has filed this petition under Article 227 of the Constitution of India.

3. The petition was dismissed for want of prosecution on number of occasions,

however, it was subsequently restored. The Petitioner was directed to deposit monthly rent from time to time and undertaking to that effect was given by him. In spite of the undertaking, rent was not deposited and as a result, the stay which was granted to the execution of the decree passed by the lower Court was vacated and the Respondent executed the decree and was put in possession of the premises legally in the execution proceedings. Thereafter, the building was demolished and a new building has been constructed by the Respondent-landlord.

4. The learned Counsel for the Petitioner, however, submits that if he succeeds in this petition, he would have a right to seek possession under the provisions of the Rent Act. It is submitted that both the Courts below had erred in holding that the Petitioner had committed default in payment of rent demanded by the Respondent by sending a statutory notice u/s 12(2) and therefore, had erred in holding that the Respondent was entitled to the decree under the provisions of Sections 12(3)(a) and 12(3)(b) of the Rent Act. It is submitted that the statutory notice was sent by the Respondent demanding arrears of rent from June, 1976 to end of January, 1977. After the notice of demand was received, it is submitted that the Petitioner remitted a Money Order dated 10-2-1977 for the period from July, 1976 to February, 1977 and as such, the amount having been remitted by the Petitioner by Money Order and the same having been refused to be accepted by the Respondent-landlord, no cause of action survive under the provisions of Section 12(3)(a) and therefore, the suit itself was not maintainable. He relied on the judgment of the Division Bench of this Court in the case of *Narhar Damodar Want v. Narmadabai T. Nave*, reported in 1984 Mh.LJ. 313. He also relied on the judgment of this Court in the case of *Appa Dagadu Inpure v. Gopalrao Bari Smarak Trust Pine by its Trustees and others*, reported in Bom.R.C. Page 285. He submitted that both the lower Courts had erred in holding that the Petitioner had not paid the rent for the month of June, 1976 when the rent receipt clearly show that it was issued in June, 1976. The Court erred in holding that the said rent was for the period of May, 1976 and not June, 1976. It is submitted that though it was an admitted position that the Petitioner had not deposited rent regularly in the Court, the provisions of Section 13(I)(b) would not be attracted since on compliance of statutory notice u/s 12(2), no cause of action survive in favour of the landlord for filing a suit.

5. Shri Dani, learned Counsel for the Respondent, on the other hand, submitted that both the Courts had recorded the finding that there was an agreement between the landlord and the tenant and it was agreed that payment of the rent would be made in advance. He submitted that this finding had not been challenged by the Petitioner herein. He submitted that therefore, the rent which was remitted was, even according to the tenant, for the period from July, 1976 to February, 1977 and therefore, the entire amount demanded had not been paid. Therefore, the cause of action had accrued in favour of the landlord to file a suit for eviction.

6. In my view, the submission made by the learned Counsel for the Petitioner

cannot be accepted. In the first place, the petition itself, in my view, has become infructuous on account of execution of the decree during the pendency of this petition. However, since the Petitioner is entitled for restoration of possession in the event of decree being set aside, it would be necessary to consider the rival submissions. Before considering the rival submissions, it would be fruitful to consider the scope of the jurisdiction of the High Court under Article 227. The Apex Court in a recent judgment in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, has observed in paragraphs 11, 22 and 25 as under:

11. In the initial years the Supreme Court was not inclined to depart from the traditional role of certiorari jurisdiction and consistent with the historical background felt itself bound by such procedural technicalities as were well known to the English Judges. In later years the Supreme Court has relaxed the procedural and technical rigorous, yet the broad and fundamental principles governing the exercise of jurisdiction have not been given a go-by.

22. Article 227 of the Constitution confers on every High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any Court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by Clauses (2) and (3) of Article 227 with which we are not concerned here at. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of

the proceedings having been certified and sent up by the inferior Court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior Court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior Court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

7. Keeping in view, the broad principles as laid down in the Apex Court judgment, the rival contentions are to be considered. The submission made by the Petitioner cannot be accepted. In the present case, the Petitioner admittedly, has not sent his arrears of rent as demanded by the landlord from June, 1976 to January, 1977. This being the position, cause of action, therefore, has accrued in favour of the landlord for filing a suit for recovery of possession from the tenant and that being so, the tenant has taken the risk of proving this fact in the Court of law. The cause of action having been survived, provisions of Section 12(3)(b) also would be attracted if the tenant failed to deposit the rent regularly in the Court. There cannot be any dispute in respect of the ratio of judgment laid down in the case of Narhar Damodar Wani (*supra*) and the judgment in the case of Appa Dagadu Inpure (*supra*). The concurrent finding of fact has been recorded by both the Courts below that the tenant had agreed to give the rent in advance to the landlord and after the arrears is demanded by the landlord, the entire amount as claimed by the landlord in his demand notice u/s 12(2) was not sent. Thus, this being the concurrent finding, it will not be open for the High Court while exercising writ jurisdiction under Article 227 to interfere with the said finding of fact. Further, admittedly, during the pendency of the suit and the appeal, the tenant has failed to pay the rent regularly in the Court. The provisions of Section 12(3)(b), therefore, will be attracted in the present case. Coupled with this fact, on account of non-payment of rent in this Court pursuant to the undertaking given by the Petitioner to this Court, this Court had vacated the stay which was granted to the execution of the decree and the decree, thereafter, was executed and possession of the premises was taken by the landlord. Taking into consideration all these facts and circumstances also, in my view, no case is made out for interfering with the judgment and order passed by both the Courts below.

8. Hence, writ petition, accordingly, is dismissed. Rule is discharged. Under the circumstances, there shall be no order as to costs.