
(2004) 04 BOM CK 0125

In the Bombay High Court

Case No : Writ Petition No. 2781 of 2004

Taiba Quareshi and Others

APPELLANT

Vs

Mrs. Marina Sequeria Lourdes

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 3 MhLj 917

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : G.S. Godbole, for the Appellant; C.R. Dalvi, for the Respondent

Final Decision : Allowed

Judgement

V.C. Daga, J.—This petition is filed at the instance of the obstructionists, who have obstructed execution of eviction decree passed by the Judge, Small Causes Court, Mumbai, in RAE Suit No. 577/1303 of 1992, in favour of respondent No. 1, Landlady and against original defendant Nos. 1 to 3, the tenants (respondent Nos. 2, 4 and 5 herein) on the ground that landlady required house for her own of bona fide occupation. Parties to the petition are referred to as per their original status for the sake of brevity.

The Facts :

The facts giving rise to the present petition in nutshell are as under :

2. The petitioners are occupants of adjoining flat No. 8 in a building known as "Ragie Annexe", M.M. Chotani Road, Mahim, Mumbai 400 016, whereas dispute relates to flat No. 7 located in the same building.

3. The original tenant-Mrs. Una C. Saldanha along with Anthony Saldanha and Rev. Fr.Chrys Saldanha, the original defendants in the suit were tenants of one Mr. Marine Sequeria. Mrs. Marine Sequeria, Landlady filed a suit for eviction and permanent injunction against her tenants being RAE Suit No. 577/1303 of 1992

in the Court of Small Causes at Mumbai. After the death of defendant No. 1, defendant Nos. 2 and 3 were treated as parties to the suit in their own capacity as well as legal representative's of the deceased defendant No. 1. In the said suit defendants suffered decree for eviction and permanent injunction on 6-8-1998; whereby defendants were directed to put plaintiff in possession of the suit premises and they were permanently restrained from inducing any third person or party in the suit premises. This decree has become final and conclusive.

4. The above decree for eviction was put to execution by the original plaintiff-decree holder. The execution of the decree was obstructed by one Moh. Zahid Idris Qureshi, petitioner No. 4 herein; along with Smt. Taiba Qureshi, Nasrin Qureshi and Shehnat Qureshi, with others; with the result, original decree holder, respondent No. 1 was required to take out notice for removal of obstruction, registered as Notice No. 69/1998.

5. On being noticed, the obstructionist No. 5-Zahid Qureshi (petitioner No. 4) appeared before the executing Court. He filed his objection in the nature of reply to the Obstructionist notice contending that he is in the occupation of the said flat as a tenant. He also alleged that he was having documentary proof in his possession to establish his tenancy rights. He, thus, claimed to be in possession of the suit premises in his own rights. After receipt of counter affidavit, rejoinder was filed by the decree holder.

6. The petitioner No. 4 herein; moved an application to amend original affidavit dated 28th July, 2000, and sought to incorporate certain additional pleadings so as to introduce story of surrender of tenancy rights by the original tenant respondent Nos. 2 and 4 and creation of fresh tenancy in favour of the said obstructionist on payment of premium (Pagadi) said to have been paid in cash prior to the execution of the agreement to the landlady-decree holder.

7. By way of extension of the story sought to be put up by the obstructionist, it was urged that the original tenant- Mrs. Saldanha had surrendered her tenancy rights in the premises in favour of Shri Shahid Qureshi and Mr. Zahid Qureshi, Obstructionist Nos. 4 and 5 and that the said surrender was accepted by the original plaintiff-decree holder. Thereafter, on 18-7-1992 tenancy agreement was executed between the original decree holder (respondent No. 1 herein) and one of the obstructionist No. 5, Zahid Qureshi. It was further alleged that another tenancy agreement came to be executed on 11-8-1997 by respondent No. 1 in favour of obstructionist No. 5, Zahid Qureshi and he was asked not to disclose the said agreement since suit for eviction was pending in the Small Causes Court. In this view of the understanding between the parties to the agreement, it was not disclosed.

8. The Obstructionist notice, with the above rival pleadings on record was put to trial. The obstructionists, petitioners led oral evidence in support of the obstruction to the execution of decree. The petitioners produced documentary evidence to demonstrate their alleged lawful possession over the suit premises

and sought to prove all the agreements executed by respondent No. 1 creating fresh tenancy in their favour in respect of the suit flat. At the same time, decree holder also lead her evidence in support of her defence in consonance with her pleadings. Learned trial Judge (executing Court) vide its judgment and order dated 31-1-2002 made the obstructionist notice No. 69/1998 absolute and rejected all the contentions raised by the obstructionists to the execution of the decree and went on to record a findings based on evidence that the obstructionists have failed to prove their independent right, title or interest over the suit premises and that their alleged possession is not in their own right but as a product of collusion between judgment debtors and obstructionists. The executing Court also noticed from the reply that the obstructionist had claimed protection u/s 15 of the Bombay Rent Act which clearly went to establish that they were claiming possession through judgment debtor, that is how, executing Court found that objection to the execution proceeding under Order 21, Rule 97 of the Civil Procedure Code, at the instance of the petitioners was not maintainable. In this view of the matter, executing Court directed removal of obstruction and issued warrant of possession for eviction of the obstructionists from the suit premises.

9. The story set up by the obstructionist was held to be absolutely unbelievable, false and concocted. It was also found that the documents were manufactured for the purpose; by using old stamp papers. None of them were purchased by either of the parties to the documents. Different typewriters were used to complete these documents. The documents which were sought to be proved were not proved in accordance with the provisions of the Evidence Act. The trial Court recorded detailed reasons in support of its findings and exposed the false and concocted transaction set up just to defeat the fruits of the decree and made the obstructionist notice absolute vide its order dated 31-1-2004.

10. Being aggrieved by the aforesaid order, the obstructionists filed Appeal before the Division Bench of the Small Causes Court at Mumbai, being Appeal No. 171 of 2002 and challenged the findings recorded by the executing Court. The Lower Appellate Court after scanning oral and documentary evidence and circumstances available on record, confirmed all the findings recorded by the trial Court by a well reasoned order. The lower appellate Court found that the document Ex.6 did not bear date of its preparation. The said document had been prepared on 2 different typewriters. No explanation was furnished as to why two typewriters were used for preparing that document. In this view of the matter, the lower appellate Court doubted the credibility of the case put up by the appellant-obstructionists and did not accept the genuineness of the document marked as Exh.6, sought to be relied upon by the petitioners-obstructionists.

11. The lower appellate Court also found that the document at Ex.7 which was shown to have been prepared on 18-7-1992 was prepared by one Advocate Shri J.P. Riyaz. In that document defendant No. 1-Mrs. Lina Saldanha came to be shown as deceased, though undisputedly she died on 30-12-1997. It was thus

recorded that the document must have been prepared after death of Mrs. Lina Saldanha. It was observed that had it been prepared in 1992 itself, reference to Mrs. Saldanha showing her as deceased would not have appeared. The said circumstances were considered by the lower appellate Court to attach credence to the findings recorded by the trial Court. In order to explain and to resolve this anomaly, the lower appellate Court found that the scribe of the said document ought to have been examined and the said document ought to have been proved by examining scribe of the document.

12. The lower appellate Court further found that so far as documents at Exhibits 9 and 11 are concerned, no independent witnesses were examined to prove these documents, especially, when plaintiff had denied her signature on those documents. The lower appellate Court found that the trial Court on comparison of the signature u/s 73 of the Indian Evidence Act, for reasons recorded, rightly came to the conclusion that the signatures of the plaintiff did not tally with her admitted signatures and came to the conclusion that the signatures on the said documents were forged.

13. The lower appellate Court has also taken into account number of other corroborative circumstances available on record to reach to a conclusion that documents produced by the petitioners were absolutely false and fabricated and the same were engineered to defeat the fruits of decree in collusion with original defendants- tenant. That is how, lower appellate Court for the cogent reasons dismissed the appeal vide its judgment and order dated 14-1-2004.

14. Being aggrieved by the aforesaid order, the petitioners have filed the present petition under Article 227 of the Constitution of India.

Rival Submissions :

15. The solitary point canvassed by Shri Godbole, learned Counsel appearing for the petitioner was that the executing Court rather than comparing signatures on the documents u/s 73 of the Evidence Act, ought to have referred those documents to the handwriting expert for opinion. He placed reliance on the judgment of the Apex Court in the case of The State (Delhi Administration) Vs. Pali Ram, and further submitted that the documents in question were duly proved and exhibited as such the Court could not have held that the documents were false or fabricated or engineered for setting up false case.

16. Shri Dalvi, learned Counsel for the respondents in reply, contended that both the Courts below have concurrently held that the documents were false and fabricated. He further contended that each and every finding recorded by both the Courts below can be supported on basis of the material available on record. He took me through the findings and the material available on record to substantiate his submissions.

17. Shri Dalvi further submitted that this Court not being a Court of appeal is not expected to reappreciate the evidence unless this Court finds any perversity has

crept in while appreciating evidence.

18. Shri Dalvi submits that it was not at all necessary for the Courts below to refer documents in question for opinion of the handwriting expert, in view of the fact that comparison of the signatures made by the Court u/s 73 of the Evidence Act was well within its jurisdiction; apart from the fact that comparison of signatures on different documents and circumstances available on record do suggest that documents were false and fabricated and were engineered to defeat the fruits of decree in collusion with original tenant. He, thus, prayed for dismissal of the petition with costs.

19. In rejoinder, Shri Godbole, learned Counsel for the petitioners took me through the counter affidavit and the evidence produced on record and went on to emphasise that the petitioners have parted with huge amount initially in the sum of Rs. 1,00,000/- in addition to the sum of Rs. 2,50,000/- with the amount of rent for 5 years at the rate of Rs. 8,000/- p.m. till December 2002. When this additional piece of evidence pressed into service, immediate reaction was to make enquiry from Shri Godbole; whether the alleged payments running into lacs of rupees were disclosed in the Income Tax returns filed by the petitioners. Shri Godbole, after taking instructions from petitioner No. 4, who was present in Court, stated that no such disclosures have been made by the petitioners in their Income Tax returns. Shri Dalvi rose to urge that one fails to understand; if the transaction was genuine, and if the payments were really made, then why such payments were not disclosed in the Income Tax returns of either of the obstructionist. It is not necessary for me to consider rival submissions advanced in this behalf or to record any finding, based on this aspect of the matter, especially, when other ample evidence is available on record to suggest that each and every finding recorded by the Courts below can be supported and is based on the basis of material available on record. Shri Godbole could not point out any perversity in appreciating evidence or findings recorded by the Courts below. He could not demonstrate legal infirmity in the impugned judgment except advancing sole submission that the trial Court should not have resorted to Section 73 of the Evidence Act.

Consideration :

20. Now, turning to the sole submission advanced by Shri Godbole; on the canvas of Section 73 of the Evidence Act, no fault can be found with the method adopted by the trial Court. Comparison of signatures on the disputed documents with that of admitted signature is permissible u/s 73 of the Evidence Act. The Court can form its own opinion on basis of such comparison. Merely because another method suggested by Shri Godbole could have been a better method to appreciate the evidence by itself cannot be a ground to upset concurrent findings of fact recorded by the Courts below. Nothing prevented petitioners to examine their own handwriting expert and to prove their contention.

21. The last desperate submission made by Shri Godbole also deserves to be

rejected. Having failed to examine their own handwriting expert, now it is too late for the petitioners to urge that they should be allowed to examine their own handwriting expert. Submission made in this behalf is thus rejected.

22. Alternatively, assuming for the sake of arguments, that second view on the facts and circumstances of the case may be possible, then the question would be : Can this Court act as a Court of Appeal while examining the impugned order of the Courts below in exercise of writ jurisdiction under Article 227 and substitute its own view in place of the view of the trial Court. Let me have a look to the scope of supervisory writ jurisdiction of this Court under Article 227 of the Constitution of India; so as to find out, to what extent the Court can interfere with the discretion exercised by the lower Courts.

23. The power of the High Court under Article 227 of the Constitution is restricted to interfere in the cases showing grave dereliction of duties or flagrant violation of law. Writ jurisdiction is to be exercised sparingly in cases where injustice is apparent unless High Court interferes. It cannot be used as appellate or revisional power. While interfering with the discretion exercised by the lower Courts the higher Court, especially, the Writ Court, is expected to be very slow. While dealing with the matter raised before it, the Writ Court would not be justified in interfering with exercise of discretion solely on the ground that if it had considered the matter at the trial stage, might have come to contrary conclusion. If conclusions drawn by the trial Court are reasonable and in judicial manner the fact that the Writ Court would have taken a different view at the trial stage, may not justify interference with the orders of the Courts below.

24. In my view, the view taken by the Courts below in the impugned order, is a possible view. The discretion exercised by it is reasonable. The same has been exercised after taking into account all the relevant facts and circumstances of the case brought on record. Comparisons of the disputed signatures is not sole foundation of the judgment. Other circumstances, oral and documentary evidence were also considered by the Courts below. Consequently, the discretion exercised by the Courts below while comparing disputed signatures needs no interference at the hands of this Court, especially, in the writ jurisdiction under Article 227 of the Constitution of India. No other contention was raised.

25. In the result petition is without any merit and the same is liable to be dismissed. Accordingly, petition is dismissed in limine with no order as to costs.