

(1990) 08 BOM CK 0070

In the Bombay High Court

Case No : Civil Revision Application No. 67 of 1988 and Contempt Petition No. 153 of 1988

Vidyadhar Govind Patwardhan

APPELLANT

Vs

Aravind Shreedhar Ghatpande

RESPONDENT

Date of Decision : 03-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1990) 3 BomCR 567 : (1991) MhLj 181

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : A.V. Anturkar, for the Appellant; Usha Purohit, for the Respondent

Judgement

S.M. Daud, J.—The petitioner in the two matters is the landlord who had secured a decree for ejectment against one Sahashrabuddhe. The said decree was assailed in appeal and writ petition not by Sahashrabuddhe, but by the person figuring as 1st respondent in the present proceedings.

2. In the writ petition bearing No. 824 of 1988 I had passed an order on 23 February, 1988 which reads thus :---

"Counsel for petitioner is heard. There is no merit in the petition as the decree passed by appeal Court is perfectly correct. Time to vacate till 15-5-88 granted to the petitioner on his furnishing in two weeks a written undertaking in the usual terms, Undertaking to be furnished in the appeal Court."

On 7 April, 1988, the 1st Respondent gave an undertaking worded thus :---

"That I Arvind Shreedhar Ghatpande hereby undertake and assure that I shall hand over the vacant and peaceful possession to respondent No. 1 Shri V.G. Patwardhan the landlord of the premises in my possession at 1481. New Sukhrawar Peth, Pune-2 on or before 15-5-1988 without failure subject to the decision of C.R.A pending in the High Court from Civil Appeal No. 983/ 1986."

There was no C.R. A pending. What was pending was a Second Appeal hearing No. 173 of 1988 and that was directed against the District Court's judgment in Civil Appeal No. 983 of 1986. The said second appeal was dismissed in limine on 11 April, 1988 by Mr. Justice Tipnis. Down but not out, the 1st respondent initiated another round of litigation.

3. This time, the 1st respondent filled a suit claiming a declaration of his being a tenant of the petitioner---the contract of tenancy having been arrived at on or about 17 March, 1988. Unfortunately, the two Court below were lured into granting an interim injunction pending the disposal of the suit, the effect being that the 1st respondent should not be evicted. In other words, the time and expense incurred by the petitioner in facing Writ Petition No. 824 of 1988 and the 2nd Appeal No. 173 of 1988 not to speak of the proceeding the same, had all gone waste. The revision is directed against the order granting interim injunction and Contempt Petition No. 153 of 1988 is to record a finding of respondent 1 having committed contempt and take appropriate action against him.

4. Counsel for the petitioner is right in submitting that there is no truth whatsoever in the claim of respondent 1 to have entered into a contract of tenancy with the petitioner on or about 17 March, 1988. If any such contract was reached it would have been reduced to writing and mentioned before Tipnis, J., on 11 April, 1988 when the said Judge dismissed the second appeal in limine. Learned Counsel for the petitioner takes exception and rightly so to the observations of the Courts below that the suit instituted by the 1st respondent required consideration. While granting interim, reliefs, Courts have to be careful and no cock and bull story entitles the author of that story to interim relief though in a sense even such stories may require to be listened to. The 1st respondent had committed contempt by the institution of the suit which is based on patently false averments and deserves to be dealt with therefore. In so far as the revision is concerned, it will have to be allowed. Hence the order ;---

ORDER

Rule issued in the revision is made absolute. The Interim injunction granted in favour of respondent No. 1 is hereby set aside. Respondent 1 is directed to vacate the premises and hand over vacant possession to the petitioner within 2 weeks from today, failing which it will become necessary to consider the penalty to be imposed upon him for his contumacious conduct. Rule in the C.R.A. is hereby made absolute with costs. A declaration of respondent 1 being in contempt is issued in contempt Petition No. 153 of 1988 and time as stipulated above is granted to respondent 1 to make amends. Contempt petition to come up four weeks hereafter, Costs in the said petition to be paid and borne by respondent 1.