

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7315 OF 2019

THE ORIENTAL INSURANCE COMPANY LTD.] Petitioner
 Vs.
Sudha Hari Pophale] Respondent

.....
Mr. V.Y. Sanglikar, Advocate for the Petitioner.

.....

CORAM : R.G. KETKAR, J.

DATE : 8th JULY, 2019.

P.C.

Heard Mr. Sanglikar, learned Counsel for the petitioner.

2. This Petition takes exception to the order dated 4th May, 2019 passed by the learned trial Judge below Exhibit 1 in R.A.N. Application No.42 of 2012. By that order, the learned trial Judge rejected the objection raised by the petitioner herein to the jurisdiction of the Small Court to entertain and try the application filed by the respondent for fixation of the standard rent. The learned trial Judge held that the Small Causes Court has jurisdiction to entertain and try the proceedings.

3. In support of this Petition, Mr. Sanglikar submitted that the petitioner had initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 by Case No.3 and 3A of 2003 before the Estate Officer against the respondent herein, among others. By order dated 9th June, 2009, the Estate Officer passed order of eviction in respect of Flat No.6 along with Servant Quarters bearing No.6-A admeasuring 2601.03 square feet

(carpet) approximately on the 3rd floor of the building known as “Oriental Mansion” (earlier known as “Indian Mercantile Mansion” also known as “Waterloo Mansion”) situate at Madame Cama Road, Opp. C.J. Hall, Mumbai-400 001. The Estate Officer directed respondent No.1 and others to pay damages @ Rs.1,86,045/- per month from 1st February, 2003 till vacant possession is surrendered.

4. Aggrieved by this order, respondent No.1 and others preferred Misc. Appeals No.187 and 188 of 2009. By order dated 26th March, 2013, the learned Judge, City Civil & Sessions Court, Greater Bombay partly allowed Misc. Appeal No.187 of 2009 and modified the order of damages passed by the Estate Officer. The learned Judge directed respondent No.1 and others to jointly and severally pay damages to the petitioner @ Rs.55/- per square feet per month together with interest @ 9% per annum thereon from the date of termination of tenancy i.e from 1st February, 2003 till delivery of vacant possession.

5. Aggrieved by this decision, respondent No.1, among others instituted Writ Petition No.5552 of 2013 in this Court. By order dated 6th August, 2013, this Court summarily dismissed the Writ Petition.

6. Aggrieved by this order, respondent No.1 and others instituted S.L.P before the Apex Court. The S.L.P was disposed of on 10th November, 2014. The Apex Court did not interfere with the impugned order and permitted respondent No.1 and others to withdraw the S.L.P for any remedy, if permissible under the law but without any liberty to challenge the very impugned judgment before the Apex Court. The S.L.P was dismissed as withdrawn.

7. Respondents No.1 and others filed Review Petition No.149 of 2014 in this Court which was dismissed by order dated 15th January, 2015. Mr. Sanglikar submitted that out of 7 rooms, the petitioner has executed decree and obtained possession of 3 rooms and this fact is recorded by the Apex Court in its order dated 13th August, 2013 in S.L.P No.25694 of 2013.

8. Mr. Sanglikar submitted that order of eviction as also order awarding damages has attained finality. Respondent, however, filed application for fixation of standard rent which itself is not maintainable. The Small Causes Court, therefore, has no jurisdiction to entertain and try the proceedings. By the impugned order, the learned trial Judge has held that the proceedings are maintainable. In view of the decision of the Apex Court in **Banatwala Vs. LIC, 2011 (10) SC 652**, the Small Causes Court has jurisdiction to fix the standard rent under the provisions of the Maharashtra Rent Control Act, 1999.

9. In view of these submissions, issue notice to the respondent returnable on **31st July, 2019**. Till next date, there shall be ad-interim order in terms of prayer clause (b). Hamdast is permitted.

[R.G. KETKAR, J.]