

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).11019/2013

(From the judgement and order dated 28/01/2013 in WPC No.2103/2012 of The HIGH COURT OF BOMBAY)

SUNITA VITHAL SURVEY @ SUREKHA

Petitioner(s)

VERSUS

BHUPENDRA KALYANJI SHAH

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment and permission to place addl. documents on record and with prayer for interim relief)

Date: 20/03/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. Shivaji M. Jadhav, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

Taken on board.

This petition filed for setting aside order dated 28.1.2013 passed by the learned Single Judge of the Bombay High Court in Writ Petition No.2103/2012 is another subterfuge employed by the heirs of the tenant to defeat the right of the landlord.

The suit property, i.e. room No.134 belongs to Shah Raoji Sojpal Trust (for short, 'the Trust'). Two trustees, namely, Smt. Laxmibai Ramji and Shri Kalyanji Ramji filed R.A.E. and R.Suit No.2137/1972 for eviction of tenant Shri Keshav Ganajan Ranade on the ground that he was a defaulter. The suit was decreed by the Small Causes Court vide judgment dated 22.11.1979 and the tenant was directed to handover vacant and peaceful possession on or before 21.5.1980. The appeal filed by the heirs and legal representatives of the tenant was dismissed by the lower appellate Court on 19.1.1987.

Although, a period of 34 years has elapsed from the date of decree, the trust has not been able to get vacant possession of the suit premises because the heirs and legal representatives of the tenant used all possible means to defeat the decree of eviction. They were unsuccessful in their adventures till the Executing Court passed order dated 16.9.2011 and declared that the execution petition is barred by time.

The respondent challenged the order of the Executing Court in Writ Petition No.2103/2012. The learned Single Judge allowed the writ petition and set aside the order of the Executing Court. Simultaneously, he directed the Executing Court to issue warrant of possession and ensure that the same is enforced and executed and the possession of the suit premises is obtained and handed over to the respondent herein within eight weeks.

We have heard Shri Shivaji M. Jadhav, learned counsel for the petitioner and carefully perused the record.

The long pendency of the litigation has already taken its toll. The trustees, who filed the suit and the tenant have travelled to the next

world, but the heirs of the tenant have been filing one or the other litigation for last more than three decades. It is a tragedy that the final culmination of a simple suit for eviction has taken more than 40 years and the Trust which had succeeded in persuading the trial Court to pass a decree of eviction is yet to get possession of the property which was leased out many decades ago for a paltry rent of Rs.25/- per month.

In our considered view, the detailed reasons recorded by the High Court for reversing the order passed by the Executing Court are legally correct and the impugned order does not call for interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

The petitioner is allowed three months' time to hand over vacant possession of the suit property to the respondent. This would be subject to the condition of her filing usual undertaking before this Court within a period of four weeks from today.

During the intervening period, the petitioner shall not induct any person in the suit property in any capacity whatsoever else she will have to suffer punishment under the Contempt of Courts Act, 1971.

If the petitioner fails to abide by the time fixed by this Court for handing over vacant possession of the suit property then the respondent shall be free to approach the Executing Court. That Court shall take all necessary coercive measures for securing compliance of the decree passed by the trial Court in 1979. The respondent shall also be free to file petition for punishing the petitioner under the Contempt of Courts Act, 1971.

The Registry is directed to send copy of this order to the respondent by registered post at the address mentioned in the memo of the special leave petition.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master