

PRAKASH H. JAIN  
v.  
MS. MARIE FERNANDES

SEPTEMBER 23, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Rent and Eviction :*

*Maharashtra Rent Control Act, 1999—Section 43(4)(a)—Chapter VIII—Eviction proceedings under—Application by licensee seeking leave to contest—Not filed within stipulated period—Competent authority condoning the delay and granting the leave—Held, provisions of Chapter VIII of the Act indicate that competent authority constituted thereunder is not a ‘court’ for the purpose of making the provisions of Limitation Act attracted to the proceedings before it—In the event of an application/affidavit with grounds of defence and leave to contest not having been filed within the stipulated period, competent authority is to pass orders of eviction as envisaged by Section 43(4)(a)—Limitation Act, 1963—Section 5.*

**Respondent-landlord entered into a licence deed with appellant and thereby allowed appellant to use property in question as a licensee for a period of one year from date of the deed. On expiry of the said licence deed, respondent filed an application before the Competent Authority under the Maharashtra Rent Control Act, 1999 for eviction of appellant and for compensation on ground that the leave/licence had expired by efflux of time. Summons having been served on the appellant, he entered appearance and filed an application to summon for a document. At a later stage the appellant filed an application seeking leave to contest along with an application for condoning the delay in filing the said application. The Competent Authority condoned the delay and granted the leave. Aggrieved, respondent approached the High Court which set aside the orders passed by the Competent Authority. Hence, the present appeal.**

**On behalf of appellant, it was contended that the Competent Authority is a ‘court’ in the eye of law and consequently possesses**

**A** inherent power to condone the delay as is available to any other Court under the Civil Procedure Code; that appearance within 30 days would be sufficient compliance and it is not necessary that the application itself seeking for leave to defend also should be filed within that period.

**B** On behalf of respondent, it was contended that Competent Authority is neither a 'court' in the eye of law as would denote a court of ordinary jurisdiction nor the provisions of the Limitation Act or the principles enshrined therein could be invoked or exercised by the said Authority in relation to any of the proceedings arising under the Act.

**C** Dismissing the appeal, this Court

**D** HELD : 1.1. The various provisions under Chapter VIII of the Maharashtra Rent Control Act, 1999 unmistakably indicate that the competent authority constituted thereunder is not 'court' and the mere fact that such authority is deemed to be court only for limited and specific purposes, cannot make it a court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such Competent Authority or clothe such authority with any power to be exercised under the Limitation Act. The Competent Authority constituted under and for the purposes of the provisions contained in Chapter VIII is merely and at best a statutory authority created for a definite purpose and to exercise powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers. [1019-G, H, 1020-A, D, E]

**F** *Gurditta Mal v. Bal Swarup*, AIR (1980) Delhi 216; *Mukri Gopalan v. Cheppilat Puthanpuravil Aboobacker*, [1995] 5 SCC 5; *P. Sarathy v. State Bank of India*, [2000] 5 SCC 355; *Thakur Jugal Kishore Sinha v. The Sitamarhi Central Co-operative Bank Ltd. and Anr.*, [1967] 3 SCR 162; *Sakuru v. Tanaii*, [1985] 3 SCC 590; *Birla Cement Works v. G.M. Western Railways and Another*, [1995] 2 SCC 493; and *France B. Martins v. Mafaida Maria Teresa Rodrigues*, AIR (1999) SC 3243, referred to.

**H** 1.2. When a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that the said thing is not in reality that something, the legislative enactment requires it to be

treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more, when the deeming clause itself confines, as in the present case, the creation of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the Competent Authority can by no means be said to be 'court' for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963. [1020-B-D]

2. There is no such thing as any inherent power of court to condone delay in filing proceedings before Court/Authority concerned, unless the law warrants and permits it, since it has a tendency to alter the rights accrued to one or the other partly under the statute concerned. In the event of an application/affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire into the merits of the defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in clause (a) of sub-section (4) of Section 43 of the Act. [1017-G-H, 1021-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7977 of 2003.

From the Judgment and Order dated 17.7.2002 of the Bombay High Court in W.P. No. 1575 of 2002.

V.N. Ganpule and Ms. Punam Kumari for the Appellant.

Joaguin Reis, Shridhar Y. Chitale and Mrs. Sumita Ray for the Respondent.

The Judgment of the Court was delivered by

D. RAJU, J. : Special leave granted.

**A** The appellant, who got an order in his favour before the Competent Authority under the Maharashtra Rent Control Act, 1999 (hereinafter referred to as 'the Act') condoning the delay in filing an application to defend the eviction proceedings and also consequent leave to defend, but suffered an order against him before a learned Single Judge of the High Court of Bombay, has filed this appeal.

**B** The appellant was said to have been allowed to use the property in question as a licensee and a deed for the purpose was executed on 10.7.1999 between the parties, the period being for one year from the date of the deed. According to the respondent, the said leave and licence agreement expired on 9.6.2000. Though, according to the appellant, in March 2001 after expiry of the period as noticed above, a further agreement was executed permitted the appellant to use the property for commercial purposes for a period of five years, such a claim is being disputed and it is not only unnecessary but we are not also entering into any exercise to deal with the correctness or otherwise of such claim having regard to the limited issue that is before us in these proceedings. The respondent filed an application under Section 24 read with Section 42 of the Act before the Competent Authority (Rent Act) Konkan Division, Mumbai, for eviction of the appellant and also for compensation on the ground that the leave/licence has expired by efflux of time. The property is said to be a residential property and fully furnished and the further grievance of the respondent appears to be that the property has been unauthorisedly used for commercial purposes as well. The said petition for eviction seems to have been filed before the Competent Authority on 9.5.2001. Summons to the respondent therein, the appellant herein, was said to have been served on 19.5.2001 and the appellant entered appearance on 29.5.2001 before the said Authority. He appears to have filed an application to summon for a document supported by an affidavit. It is necessary to state even at this stage and it is the common case of parties that in the said application, there was no prayer seeking to grant leave to defend the proceedings for eviction.

**C** As a matter of fact, such an application was said to have been filed only on 10.8.2001 with an application for condoning the delay in filing the application seeking for grant of leave to defend the proceedings for eviction. It is also stated that earlier application filed on 29.5.2001 with an affidavit for summoning some document was said to have been also withdrawn as not pressed on 10.8.2001. Overruling the objections of the

respondent, the Competent Authority by its order dated 20.9.2001 allowed the application for condonation of delay filed on 5.8.2001. As a consequence whereof, the application for grant of leave to defend the eviction proceedings seems to have been separately considered and orders passed on 17.1.2002 granting leave to defend and directing the written statement in the eviction proceedings to be filed within the time stipulated therein.

Aggrieved, the respondent approached the High Court by filing Writ Petition No. 1575/2002 challenging the order condoning the delay and the subsequent order granting also leave to defend. The learned Single Judge, as noticed earlier, set aside the orders passed by the Competent Authority, both in respect of condonation of the delay and the leave granted to defend the proceedings as a consequence thereof, on the view that there is no provision in the Act or any other law which vests power in the Competent Authority to condone the delay in filing such a belated application. Consequently, the Competent Authority was directed to pass further orders on the application of the respondent filed for eviction of the appellant, in accordance with law.

Aggrieved, the present appeal has been filed. Since admittedly there were arrears, while granting stay, this Court issued certain directions for payment of arrears and it appears substantial sum has been paid though correctness of the arrears as had been paid, is being disputed by the respondent.

The learned senior counsel for the appellant strenuously contended that the learned Single Judge in the High Court committed a grave error in interfering with the order of the Competent Authority inasmuch as the Competent Authority has the power of condonation. It is the stand of the appellant that the Competent Authority, being one which has all trappings of a Court, is a 'Court' in the eye of law and consequently possess inherent power to condone the delay as is available to any other Court under the Civil Procedure Code, all the more so when Section 42 and 43 of the Act is indicative of the applicability of the provisions of the CPC. It was also contended that the appearance within 30 days would be sufficient compliance and it is not necessary that the application itself seeking for leave to defend also should be filed within that period. It was further urged that Section 5 or the principles contained in Section 5 of the Limitation Act, 1963 would

- A** apply to the case on hand to enable the Competent Authority to countenance the claim for condonation in an appropriate case and no exception could be taken to the said order passed in this case by the Competent Authority. On behalf of the appellant, certain decisions have been brought to our notice, a reference to which will be made at the appropriate stage while
- B** considering the submissions of the counsel on either side and also dealing with the decisions referred to by them in support of their respective stand.

- Per contra*, the learned counsel appearing for the respondent, while placing strong reliance upon Sections 39 and 43 of the Act, contended with equal vehemence that Chapter VIII is a distinct and separate one standing
- C** apart and disassociated from the other provisions of the Act and according to the Scheme underlying the said Chapter and the various provisions contained therein, the powers of the Competent Authority are limited as specifically delineated and indicated therein and no further or other powers outside the provisions contained in the said Chapter could be invoked by
- D** the said Authority. Argued the learned counsel for the respondent further that the Competent Authority is neither a 'Court' in the eye of law as would denote a Court of ordinary jurisdiction nor the provisions of the Limitation Act or the principles enshrined therein could be invoked or exercised by the said Authority in relation to any of the proceedings arising under the
- E** said Chapter.

- In *Gurditta Mal v. Bal Swarup*, AIR (1980) Delhi 216 a learned Single Judge of the said High Court chose to infer conferment of power under Rule 23 of the Delhi Rent Control Rules, 1959, though such power
- F** was not conferred under the statute, by relying upon Section 151 CPC which in our view could not have been, having regard to the very nature and content of power under Section 151 and its inapplicability to Authorities other than ordinary courts. The decision in *Mukri Gopalan v. Cheppilat Puthanpuravil Aboobacker*, [1955] 5 SCC 5, proceeded on the assumption, keeping in view the authority concerned which was held to be 'Court' and
- G** not *persona designata*, that Limitation Act applied in view of Section 29(2) of the said Act. The decision in *P. Sarathy v. State Bank of India*, [2000] 5 SCC 355 while construing Section 14 of the Limitation Act observed that the authority constituted under Section 41(2) of the Tamilnadu Shops and Establishments Act to hear and decide appeals was a 'court' within the
- H** meaning of the said provision, though not a 'civil court' on the view that

the proceedings before him were civil proceedings. In *Thakur Jugal Kishore Sinha v. The Sitamarhi Central Co-operative Bank Ltd. and Another*, [1967] 3 SCR 162 the Assistant Registrar of Co-operative Societies, was considered to be 'court' for purposes of attracting Contempt of Courts Act, keeping in view the nature of powers discharged by him. A

In *Sakuru v. Tanali*, [1985] 3 SCC 590 while considering the question as to whether the collector who was the appellate authority under Section 90 of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act, 1950, was court and Limitation Act, 1963 applied to appeals before him for invoking powers under Section 5 this court, on the provisions as it stood prior to certain subsequent amendments specifically made for the purpose did not approve the claim for condonation invoking powers under Section 5 of the Limitation Act. In *Birla Cement Works v. G.M. Western Railways and Another*, [1995] 2 SCC 493 Railway Claims Tribunal constituted under Section 78B of the Railways Act, 1890, was held to be not a civil court and Section 17(1)(c) of the Limitation Act, 1963 had no application, the Tribunal being only a creature of the statute. In *France B. Martins v. Mafaida Maria Teresa Rodrigues*, AIR (1999) SC 3243 it was held that the complaint filed under the Act was not either a suit or appeal or an application within the meaning of the Limitation Act, 1963 and consequently prior to the amendments effected by insertion of Section 24A in the year 1993 in the Consumer Protection Act, the Limitation Act had no application. B C D E

We have carefully considered the submissions of the learned counsel appearing on either side. Questions of the nature raised before us have to be considered not only on the nature and character of the Authority, whether it is court or not but also on the nature of powers conferred on such Authority or Court, the scheme underlying the provisions of the Act concerned and the nature of powers, the extent thereof or the limitations, if any, contained therein with particular reference to the intention of the legislature as well, found expressed therein. There is no such thing as any inherent power of court to condone delay in filing a proceeding before Court/Authority concerned, unless the law warrants and permits it, since it has a tendency to alter the rights accrued to one or the other party under the statute concerned. So far as the Maharashtra Rent Control Act, 1999 is concerned, different provisions seem to have been made constituting F G H

- A different authorities conferred with different nature of powers as well in dealing with claims before such Authorities/Court constituted for the purpose as well as in relation to further avenue of remedies against orders passed by the original Authority. Chapter VIII of the Act is itself with a caption, "Summary disposal of certain applications" and Section 39 reads that the provisions of Chapter VIII or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. Therefore, there is hardly any scope to have recourse to any other provisions in the very Act or any other law, when particularly there is specific and clear provisions of stipulation in chapter VIII itself as to how a particular situation has to be handled and what are the powers of the authorities constituted for the purpose of Chapter VIII of the Act. Section 40 envisages the appointment of competent Authority by the Government for purposes of exercising powers therein. Section 41 has its own definition of landlord for the purposes of the said chapter and Section 42 provides a special procedure for seeking eviction under the said chapter, and Section 43 provides special procedure, as the legislature itself calls it to be, for disposal of applications. Sub-section (2) of Section 43 mandates the issue of summons in the form specified in Schedule III, which form indicates, apart from informing the person concerned about the filing of an application seeking for his eviction, the need to appear and contest the application for eviction on the ground mentioned therein and that in default whereof the applicant will be entitled, at any time after the expiry of the period stipulated therefor, to obtain an order for his eviction from the said premises and further as to how the said application should be filed as well. Section 44 states that the order of competent Authority is not appealable and only revision could be sought before the Government or the Authority designated for the purpose. Section 49 deems the competent Authority under the chapter to be a public servant within the meaning of Section 21 of the IPC, while all proceedings before such Authority are deemed to be judicial proceedings for the purposes of Section 193 and 228 IPC under Section 50, and Section 51 deems the competent Authority to be civil court for the purposes of Section 345 and 346 of the Code of Criminal Procedure, 1973.

Sub-section (4) of Section 43 of the Act, which is relevant for our purpose reads as follows :

"(4)(a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(b) The competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24;

(c) Where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application."

The provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the Act, except to the extent indicated therein itself and for that matter has been given overriding effect over any other provisions in the very act or any other law for the time being in force, though for enforcement of other remedies or even similar remedies under the provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once over again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted thereunder is not 'court' and the mere fact that such authority is deemed to be court only for limited and specific purposes, cannot make it a court for all or any other purpose and at any rate for the purpose of either making the

A provisions of the Limitation Act, 1963 attracted to proceedings before such Competent Authority or clothe such authority with any power to be exercised under the Limitation Act. It is by now well settled by innumerable judgments of various courts including this Court, that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas that the said thing is not in reality that something, the legislative enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more, when the deeming clause itself confines, as in the present case, the creation of fiction for only a limited purpose as indicated therein.

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C Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the competent Authority can by no means be said to be 'court' for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963.

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The Competent Authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a *quasi-judicial* manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and limitations stipulated by the very provision of law under which the Competent Authority itself has been created. Clause (a) of sub-section (4) of Section 43 mandates that the tenant or licensee on whom the summons are duly served should contest the prayer for eviction by filing, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the Competent Authority to contest the application for eviction as provided therefor. The legislature further proceeds to also provide statutorily the consequences as well laying

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G down that in default of his appearance pursuant to the summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction

H on the ground so stated by him in his application for eviction, it is only

when leave has been sought for and obtained in the manner stipulated in the statute that an hearing is envisaged to be commenced and completed once again within the stipulated time. The net result of an application/affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire into the merits of the defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in clause (a) of sub-section (4) of Section 43 of the Act. The order of the learned Single Judge of the High Court under challenge in this appeal is well merited and does not call for any interference in our hands.

The appeal, consequently, falls and shall stand dismissed with no order as to costs.

M.P.

Appeal dismissed. D