

M/s. Bhojraj Kunwarji Oil Mill and Ginning Factory and Another

Vs

Yograjsinha Shankarsinha Parihar and Others

Civil Appeal No. 3975 of 1984

(D. A. Desai, Ranganath Misra JJ)

24.09.1984

ORDER

1. Special leave granted.

2. Respondents obtained a decree for possession against the appellants in Regular Civil Suit 146 of 1964 on the ground that the respondents bona fide required the suit premises for their personal use and occupation. The decree was made under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947. This decree was finally confirmed by the order of this Court when petition for special leave to appeal filed by the appellants-tenants was dismissed by this Court. Thereafter the decree for eviction was put into execution and physical possession of the premises involved in the dispute was handed over to the respondents on August 24, 1972. As the respondents failed to use the premises for which possession was obtained, an application was moved by the appellants for being re-inducted into possession as provided by Section 17 of the Act. As there was some delay in moving the application, a petition was filed under Section 5 of the Limitation Act praying for condoning the delay in making the application. The trial court by its order dated December 8, 1978 held that the appellants have made out sufficient case for being prevented from moving the application in time and delay was condoned. the respondents filed a revision petition which was heard by the learned Assistant Judge who reversed the findings of the trial court and held that no case was made out for condoning the delay. After an unsuccessful revision petition to the High Court, the appellants filed this appeal by special leave.

3. Mr M. N. Phadke, learned counsel who appeared for the respondents urged that both the learned Assistant Judge and the High Court were fully justified in holding that no convincing ground was made out before the trial court for condoning the delay. One has merely to peruse the convincing reasons given by the trial court for condoning the delay. The learned trial judge also noticed that till the date of his order, the demised premises were not put to use for which possession was obtained. The approach of the trial court was both fair and reasonable and the conclusion recorded by it is convincing.

4. Against this order, a revision petition was preferred which was heard by the learned Assistant Judge. We find it difficult to appreciate the approach of the learned Assistant Judge while exercising revisional jurisdiction in interfering with an eminently just order. And the High court disposed of the matter observing that the grounds urged by the appellants for seeking condonation of delay were obviously no grounds at all. Again this approach left us unconvinced. If the trial court had the jurisdiction to condone delay, we find no material for holding that there was any impropriety in exercising this jurisdiction. therefore, we are of the opinion that both the learned Assistant Judge and the High Court were not justified in interfering with the order of the trial court, in exercise of

the revisional jurisdiction on the only ground that a different view on facts elicited was possible. This approach hardly permits interference in exercise of revisional jurisdiction.

5. We accordingly allow this appeal and set aside the order of the High Court and restore the one of the trial court and remit the matter to the trial court for disposal of the application on merits according to law. Since the matter is an old one, the trial court will dispose it of within four months from today.

6. The appeal is disposed of accordingly with no order as to costs.

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