



Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3935 OF 2022

Ashok Dhawan ...Petitioner
Versus
Shaikh Basheed & Ors ...Respondents

Mr Mayur Khandeparkar, with Anand Pai, i/b JR Vakil, for the
Petitioner.
Mr Abhay L Patki, AGP, for the Respondent-State.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 11th July 2023

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1. The 1st Respondent is absent although there is a vakalatnama and previous orders indicate an appearance on behalf of the 1st Respondent.

2. Mr Khandeparkar for the Petitioner is correct in saying that this Petition portrays an utterly extraordinary state of affairs. The Petitioner owns a four bedroom residential flat situated at B/1701 of 1893 sq ft carpet area on the 17th floor of Imperial Heights at Water Pump House Road, Goregaon West, Mumbai 400 014 with an associated podium parking No.118/118T. It seems that the premises were given on leave and license to the 1st Respondent. The

Petitioner had to move the competent authority for recovery of possession and for a money claim. This ultimately resulted in an order of 7th April 2018 by the competent authority Konkan Division, Respondent No. 3. The operative portion of that order at page 191 reads as follows:

“ORDER

- (i) The Application is allowed.
- (ii) The Respondent is hereby directed to handover the vacant and peaceful possession to the Applicant of the Application premises i.e. premises bearing Flat No. B/1701, Imperial Heights, Water Pump House Road, Goregaon (West), Mumbai 400 104.
- (iii) The Respondent is hereby directed to pay to the Applicant, arrears of monthly Licence fees till 09/06/2017 and double the rate of monthly License fees i.e. Rs. 1,15,000 x 2 = Rs. 2,30,000/- from 10/06/2017 till vacant possession of the Application Premises delivered to Applicant.
- (iv) The Applicant is at liberty to appropriate the amount of security deposit, if any.”

3. Mr Khandeparkar is right in saying that the 1st Respondent (the erstwhile licensee) must be credited for sheer inventiveness in what he did thereafter. It seems that he vacated the flat but left behind all his personal belongings. So, at the time of taking possession and when a panchnama was drawn there was this flat that was empty but filled with furniture — very much like a scene from *Great Expectations*, which i the Petitioner no doubt had.

4. At this point, left with no choice, the Petitioner was forced to engage in some form of furniture rearrangement and all the 1st Respondent's belongings were then put into two rooms. This was done by the bailiff and a panchnama report at page 213 then claims execution of part of the decree by saying that the Petitioner had possession (presumably since two rooms should be more than enough for anyone) no further action was required.

5. Now Mr Khandeparkar says that having paid for a four-bedroom flat, he is confined to two bedrooms while the other two are a warehouse or a godown for the 1st Respondent's goods.

6. The Petitioner then moved the competent authority and quite rightly sought that he be delivered *vacant* possession of the entirety of his flat. At page 32 is a copy of the first impugned order which rejects the Petitioner's application. That order is of 2nd January 2020 and paragraph 6 of the order is to our minds most remarkable. In short, what this authority had said is that since it is not a "court" it cannot ensure delivery of vacant possession and cannot therefore pass an order for removal of the 1st Respondent's belongings. In other words, the authority is powerless to fully implement its own orders. A revision came to be filed against this under Section 44 of the Maharashtra Rent Control Act, 1999 and this was also rejected (pages 36 to 37) on 1st April 2021. Here the finding is that the competent authority "had given possession" of the premises on 14th November 2018 and this is said to mean that the competent authority had "executed the eviction order" dated 7th April 2018.

7. We are wholly unable to understand the two impugned orders of 2nd January 2020 and 1st April 2021. Possession in this case is not formal possession. As regards title to the movables, the Petitioner is clearly a stranger to them. The Petitioner's application to the competent authority was not a matter of conjecture. He sought *vacant* possession. That was the order he obtained. The word 'vacant' cannot be interpreted in such a manner, i.e., excluding part of the premises or allowing part of the premises to be fully stuffed with somebody else's belongings, at least not without doing very considerable violence to the English language. Vacant means vacant. Vacant means empty. This is what the competent authority is to ensure. There is no possibility of either the authority or the revisional authority saying that the order had been executed. It remains without being executed.

8. At page 21 we find the following reliefs:

“(c) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus, or any other writ, order or direction under Article 226 of the Constitution of India against the Respondent No.3- Competent Authority (Rent Control) and/or Authorized Execution Officer, Konkan Division well as the Additional Commissioner, Konkan Division at Mumbai

(i) Implement and Execute the Final Judgment and Order/ Decree on 7th April 2018 passed in Application No. 87 of 2017 read with Order dated 1st November 2018 passed in Execution Application No. 40 of 2018 and hand over peaceful and vacant possession of the Flat bearing No. B/1701 admeasuring 1893 square feet carpet area on

the 17th Floor of the building known as “Imperial Heights” situated at Water Pump House Road, Goregaon West, Mumbai 400 104 alongwith one Podium Parking No. 118 / 118T (‘said flat’);

(ii) To remove all goods, equipment, items, furniture and articles as recorded in the Panchnama dated 14th November 2018 lying in the said flat with the help of police assistances/ local police station and hand over peaceful and vacant possession of the Flat bearing No. B/ 1701 admeasuring 1893 square feet carpet area on the 17th Floor of the building known as “Imperial Heights” situated at Water Pump House Road, Goregaon West, Mumbai 400 014 alongwith one Podium Parking No. 118 / 118T (‘said flat’);

(iii) To remove all goods, equipment, items, furniture and articles as recorded in the Panchnama dated 14th November 2018 lying in the said flat with the help of police assistances / local police station and place the same in some warehouse/ place/location until the same is sold either by public auction / private treaty and dispose-off to a scarp merchant and deduct such amounts incurred towards securing such possession and hand over the balance amount towards part satisfaction of the decretal amount as per Final Judgment and Decree dated 7th April 2018 in respect of Flat bearing No. B/1701 admeasuring 1893 square feet carpet area on the 17th Floor of the building known as “Imperial Heights” situated at Water Pump House Road, Goregaon West, Mumbai 400 104 alongwith one Podium Parking No. 118 / 118T (‘said flat’);

(iv) In the alternative, To remove all goods, equipment,

items, furniture and articles as recorded in the Panchnama dated 14th November 2018 lying in the said flat with the help of Court Receiver, High Court Bombay (having powers under O.40 r.1 of the Civil Procedure Code) and police assistances / local police station and the Court Receiver, to and place the same in a warehouse / place/ location until the same is sold either by public auction / private treaty/ dispose-off to a scarp merchant and deduct such amounts incurred towards securing such possession and hand over the balance amount towards part satisfaction fo the decretal amount as per Final Judgment and Decree dated 7th April 2018 in respect of Flat bearing bearing No. B/1701 admeasuring 1893 square feet carpet area on the 17th Floor of the building known as “Imperial Heights” situated at Water Pump House Road, Goregaon West, Mumbai 400 104 alongwith one Podium Parking No. 118 / 118T (‘said flat’).”

9. Since these authorities have not done that which the law charged them of doing, it falls to us to do so. But we will have to proceed in a measured fashion ensuring all transparency. Hence the following order.

10. As noted above, prayer clause (c)(iv) seeks the appointment of a Receiver, and we appoint the Court Receiver, High Court, Bombay as the Receiver of the 1st Respondent’s goods and movables in the two rooms in the flat described above. The Court Receiver will proceed to the site without delay. Representatives of the Petitioner and the 1st Respondent may remain present at the time of the Court Receiver’s visit. If the two rooms are locked, the Court Receiver will unlock them and will proceed to make an inventory of the goods and

movable within. The Court Receiver will then reseal the rooms but will not place his name board on any other part of the premises or any other part of the building. The Court Receiver will then make a report to the Court, and we expect this to be done within a reasonable period of time. In the time that is available, the Receiver must also obtain a valuation of the movables.

11. We give the 1st Respondent time until 25th July 2023 and no longer to remove the items in the two sealed rooms with advance notice to the Court Receiver. If the 1st Respondent or his Advocate makes such an application, the Court Receiver will fix an appointment for the removal. The costs of the removal will be borne by the 1st Respondent exclusively. If that is done, the Court Receiver will deliver vacant (and we do mean vacant) possession of the two rooms to the Petitioner immediately.

12. We put the 1st Respondent to notice that if the two rooms are not emptied of the 1st Respondent's belongings by 25th July 2023, we propose to direct the Court Receiver to sell or dispose of the goods at the best available price by public auction or private treaty as he may deem fit. The sale proceeds will be retained with the Court Receiver, and we will permit the Petitioner to make an application for withdrawal of those sale proceeds in adjustment or partial satisfaction of his money decree.

13. The Advocates for the Petitioner will serve a copy of this order on the Advocates for the 1st Respondent.

14. List the matter for orders on 27th July 2023.

(Neela Gokhale, J)

(G. S. Patel, J)