

Dnyandeo Sabaji Naik And Anr vs Pradnya Prakash Khadekar And Ors on 1 March, 2017

Equivalent citations: AIRONLINE 2017 SC 515

Author: D Y Chandrachud

Bench: Sanjay Kishan Kaul, D Y Chandrachud, Jagdish Singh Khehar

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NOS. 25331-33 OF 2015

DNYANDEO SABAJI NAIK AND ANR

..Petitioners

VERSUS

MRS. PRADNYA PRAKASH KHADEKAR
AND ORS

..Respondents

J U D G M E N T

Dr D Y CHANDRACHUD, J

1. The Special Leave Petitions in the present case arise from three orders of the High Court of Judicature at Bombay in a First Appeal:

(i) an order dated 22 November 2013 by which a year's time was granted to the petitioners (in terms as prayed) to vacate the premises which formed the subject matter of a decree for eviction, until 30 November 2014;

(ii) an order dated 2 December 2013 by which the High Court disposed of the First Appeal in terms of the undertaking filed by the petitioners; and

(iii) an order dated 16 June 2015 by which the petition for review has been dismissed. There is a delay of 503 and 522 days respectively in the Special Leave Petitions filed against the orders dated 2 December 2013 and 22 November 2013. Since the petitioners moved the High Court in a petition for review, we condone the delay and having heard counsel, proceed to dispose of the Special Leave Petitions by this judgment.

2. The subject matter of the dispute comprises of commercial premises bearing Shop No.8 A, Bhatia Bhuvan Ground Floor, D S Babrekar Marg, Off Gokhale Road (North), Dadar, Mumbai 400 028. The finding of fact (as will be elucidated hereafter) is that the premises were granted under a conducting agreement to the petitioners for carrying on the business of a laundry. The case of the original plaintiff who sued for possession was that the premises were granted on the basis of a conducting agreement on 31 July 1968 on a royalty of Rs.260 per month. The suit for eviction was filed against the petitioners in the Court of Small Causes on 26 April 1984. Initially, the suit was decreed on 15 September 1999. In an appeal filed by the petitioners, the appellate Bench of the Small Causes Court by a judgment dated 10 January 2002 held that since the petitioners were in occupation of the premises under a conducting agreement, there was no relationship of licensor and licensee. As a result, the Court of Small Causes was held to have no jurisdiction under Section 41 of the Presidency Small Causes Courts' Act. The appeal against the judgment and decree of the Trial Court was hence allowed. The judgment of the appellate Bench was questioned in a Writ Petition filed by the predecessor-in-interest of the respondents. The petition was dismissed by a learned Single Judge of the High Court on 24 June 2002.

3. The respondents thereupon instituted a suit in the City Civil Court for recovering possession of the premises. The suit was decreed by a judgment dated 5 May 2012. The trial judge entered a finding of fact that the premises had been given on a conducting basis. In support of this finding, the trial Judge adverted to the admission of the first defendant in certain proceedings which were instituted before the Labour Court under the Payment of Wages Act to the effect that the laundry had been taken over on a conducting basis from the original Plaintiff. The finding recorded by the trial judge was in the following terms :

“The question to be considered in this case is as to whether the business of the laundry was given to the defendant no.1 on conducting basis or not. It is pertinent to note that the workers of the Kismet Laundry had filed case in the Labour Court under the Payment of Wages Act bearing Case nos.530 of 1974 and 531 of 1974 against the defendant no.1 and the plaintiff. In that case defendant no.1 had given evidence. He has admitted that he has taken laundry business “Kismet Laundry” for conducting the laundry business on 01/08/1968 on payment of royalty of Rs.260/- from the plaintiff. In his cross-examination DW-1 Dnyandeo Sabaji Naik in this suit admitted about giving deposition in the labour Court. Thus, from the admissions of the defendant no.1 it is established that the original plaintiff had given laundry business on conducting basis to the defendant no.1. In his cross-examination defendant no.1 has also further admitted that stock-in-trade, furniture relating to the business were given to him and the royalty of Rs.260/- per month was fixed. He has also not

disputed the receipts which were issued by the plaintiff accepting of payment of royalty of Rs.260/- from the defendant no.1 towards conducting his business. Moreover the copy of license issued under the Bombay Shops and Establishment Act produced in the Small Causes Court relating to the business run from the suit premises has been admitted by the defendant no.1 in his evidence. It is admitted that in the licence the name of business of Kismat Laundry managed by Bluestar Art Dyers and Cleaners has been mentioned. In the licence Narayan Narvakar was shown as the owner and Naik was shown as conductor of business. Thus, on the basis of the documentary evidence and on the admissions of the defendant no.1 it has been established by the plaintiffs that the suit premises and business therein was given on conducting basis to the defendant no.1.”

4. Against the judgment and order of the Trial Court, decreeing the suit for possession, the petitioners filed a First Appeal. On 22 November 2013, the learned Single Judge of the High Court passed the following order in the First Appeal :

“In this Appeal, after hearing the learned counsel for the Appellants fully, I disclose that there is no merit in the Appeal. However, as the Appellants have been conducting the business at the suit premises since more than 40 years, it was suggested that some time can be given to Appellants to vacate the suit premises. The learned counsel for the Appellants sought instructions and makes statement that the Appellants are ready to give undertaking that they will vacate the suit premises on or before 30th November, 2014. The learned counsel for the Respondent Nos.1 and 3 submits that Appellants to disclose the names of all the occupants of the suit premises.

2. The learned counsel for the Respondents submits that if the Royalty of Rs.5,000/- per month as directed by this Court is continued to be paid till 30th November, 2014 and undertaking be given that Appellants will not alienate the property or create any third party right in any manner in the suit property or part with the possession of the property, then the Respondents are ready and willing to accept the said undertaking and ready to accommodate the Appellants by giving time to Appellants to vacate the suit premises.

3. In view of this development and submissions made by the learned counsel of both the sides, Appellants to give their undertaking. Stand over to 29th November, 2013 at 3.00 p.m.”

5. In pursuance of the above order, the petitioners filed undertakings to vacate the premises on or before 30 November 2014. The petitioners took the benefit of the order of the High Court by which they were granted a year's time to vacate the premises. The undertakings formed the basis of the order of the learned Single Judge dated 2 December 2013 when the First Appeal was disposed of. The matter did not rest there. An application for extension of time to vacate the premises was filed before the High Court which was allowed by the learned Single Judge in the following terms, by an

order dated 5 December 2014 :

“Application is moved for extension of time till 31st May, 2015 and also seeking leave to deposit the rent from September, 2014 onwards. This Court by order dated 2nd December, 2013, has granted time to the applicant to vacate the suit premises till 30th November, 2014. Now the applicant seeks extension of time. The learned counsel for the applicant submits that his daughter is doing her post graduation and the applicant wants some time to find out other premises for their laundry business. The learned counsel for the respondent submits that the applicants have put up partition in the suit premises and abused respondent when they went to take possession 30th November, 2014 at 7.00 p.m. In view of the submissions, Civil Application is disposed of by passing the following order.

Order Applicant shall vacate the premises and hand over possession of suit premises to respondent at 7.00 p.m. on 31st March, 2015.

This is the last extension and hereafter no extension will be given.

Applicant to remove any construction i.e. partition if put up at the time of handing over possession.

The applicant shall give undertaking to that effect on or before 9th December, 2014.

The applicant is directed to deposit the arrears of rent from September, 2014 onwards till 31st March, 2015, on or before 17th December, 2014.”

6. By and as a result of the above order, the petitioners obtained an extension of time until 31 March 2015 to vacate the premises. The petitioners then filed a Review Petition before the High Court on 17 March 2015. Together with the Review Petition, the petitioners filed another application for extension of time to vacate the premises by a further period of five years. The learned Single Judge dismissed the Review Petition on 16 June 2015.

7. The petitioners moved this Court under Article 136 of the Constitution. On 28 August 2015, notice was issued in the application for condonation of delay as well as on the Special Leave Petitions and a stay of dispossession was granted conditional on the petitioners depositing an amount of Rs 15,000 towards compensation for using the premises with effect from 1 December 2013.

8. The submission which has been urged on behalf of the petitioners is that the learned Single Judge of the High Court was manifestly in error in rejecting the First Appeal without reasons. It was urged that the petitioners would be entitled to assail the judgment and order dated 22 November 2013 on merits notwithstanding the fact that the petitioners had filed an undertaking to vacate the premises by 30 November 2014. In support of the submission reliance was placed on a judgment of this Court in P R Deshpande v. Maruti Balaram Haibatti[1] to advance the submission that the filing of an undertaking does not disentitle a litigant to question the legality of the judgment dismissing the

First Appeal.

9. We are unable to accept the contention which has been advanced on behalf of the petitioners. The order of the High Court dated 22 November 2013 indicates that at the hearing of the First Appeal, the learned Single Judge indicated to the petitioners that she found no substance in the First Appeal. At this stage, counsel for the petitioners, upon seeking instructions, stated that the petitioners would be willing to furnish an undertaking to vacate the premises by 30 November 2014. The respondents acceded to this request subject to the compensation being determined at Rs 5000 per month as was directed by the High Court previously. The order of the High Court indicates that the petitioners were granted a period of ten days even thereafter to reflect upon the undertaking which they were to file and it was only on 2 December 2013 that the First Appeal was eventually disposed of in terms of the undertaking. The petitioners sought and obtained the benefit of an order granting them a period of one year to vacate the premises. The matter did not rest there. The petitioners moved the High Court again for extension of time which was allowed to them by an order dated 5 December 2014. The order of the High Court indicates that the extension was sought on the ground that the daughter of the applicant was pursuing her post graduate studies and in order to enable the petitioners “to find out other premises for their laundry business”. This sequence of events leaves no manner of doubt that the undertaking was not called for by the High Court to secure the occupation of the premises during the period that the petitioner would have required to further assail the order of the High Court in this Court. The petitioners, on the contrary, clearly indicated that they would rest content with a time of one year to vacate the premises and in fact obtained a further extension of time of four months even after the expiry of the initial term of one year.

10. The judgment of this Court in P R Deshpande (supra) lays down the following principle:

“11. A party to a lis can be asked to give an undertaking to the court if he requires stay of operation of the judgment. It is done on the supposition that the order would remain unchanged. By directing the party to give such an undertaking, no court can scuttle or foreclose a statutory remedy of appeal or revision, much less a constitutional remedy. If the order is reversed or modified by the superior court or even the same court on a review, the undertaking given by the party will automatically cease to operate. Merely because a party has complied with the directions to give an undertaking as a condition for obtaining stay, he cannot be presumed to communicate to the other party that he is thereby giving up his statutory remedies to challenge the order.”

11. The above principle applies in a situation where an undertaking is filed by a litigant, as a part of a condition for stay of operation of the judgment of the High Court. The filing of such an undertaking does not deprive the litigant of the remedy to question the judgment of the High Court under Article 136 of the Constitution. Such a situation must, however, be distinguished from a case (such as the present) where a litigant rests content with seeking time to vacate the premises and the circumstances of the case indicate that the litigant did not intend to pursue any further remedy before this Court to assail the judgment of the High Court. Having furnished an unconditional

undertaking to vacate the premises, it would be manifestly an abuse of the process for the petitioners to seek recourse to their remedies on the merits of the issues which arose in the First Appeal.

12. This case indicates a blatant abuse of the process of the Court. The petitioners not only took the benefit of an order of the High Court granting them one year's time to vacate the premises but obtained a further extension of a period of four months to vacate. The petitioners then filed a Review Petition before the High Court and moved another application, this time seeking an extension of five years to vacate the premises. The time of the High Court and, unfortunately, of this Court as well had to be devoted to a thoroughly frivolous proceeding. Learned counsel for the petitioners in fact sought to urge that as a result of the judgment of the City Civil Court, the petitioners have been deprived of establishing that their status as licensees fructified into a tenancy with effect from 1 February 1973. Quite apart from the fact that such a plea would not be open to the petitioners in the background of what has been observed earlier, we find even on merits that the submission requires only be stated to be rejected. We have extracted in the earlier part of this judgment the specific finding of the Trial Court based on the admissions of the predecessor-in-interest of the petitioners that the premises were granted to them on the basis of a conducting agreement. Besides this, in the earlier proceeding that was instituted in the Small Causes Court, it was found that the premises have been granted under a conducting agreement and there was no relationship of licensor and licensee. That being the position, the petitioners would not acquire status as tenants with effect from 1 February 1973, there being no licence in their favour.

13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception - are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society

will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.

15. We accordingly dismiss the Special Leave Petitions but while doing so, direct that:

(i) the petitioners shall vacate the premises on or before 7 March 2017;

(ii) In case the petitioners fail to vacate the premises by the date indicated in (i) above, they shall expose themselves to civil and criminal consequences under the law;

(iii) the petitioners shall pay all arrears for use of the premises computed at the rate fixed in the order of this Court dated 28 August 2015 within four weeks; and

(iv) the petitioners shall pay costs quantified at Rs 5 lakhs (Rupees five lakhs) to the respondents within two months.

16. We also clarify that this judgment shall not affect the contempt proceedings which have been initiated against the petitioners.

17. There shall be an order in these terms.

.....CJI [JAGDISH SINGH KHEHAR]J [Dr D Y
CHANDRACHUD]J [SANJAY KISHAN KAUL] New Delhi;

March 1, 2017

[1] [2] [(1998) 6 SCC 507]

| REPORTABLE |

