

Court. Though the High Court rejected various grounds raised by the respondents it held that the tenements in possession of the respondents/petitioners were not comparable to the premises in possession of the tenant in the old building and expressing its displeasure on the appellant's attitude in rejecting the offer made by the landlord concluded that the Writ Petitioners-respondents deserved sympathy. Hence the appeals, by special leave, by the tenant's legal heir.

Allowing the appeals and remitting the matter to the executing Court, this Court,

HELD: 1.1 The High Court was not justified either in entertaining the writ petitions of the respondents or in deciding the merits of the dispute against the appellant. [562 A]

1.2 Instead of honouring the pledge given by it in the form of an "undertaking" to give an identical area in the new building to the tenant, in terms of the compromise reached, the respondent-Bank inducted the writ petitioners-respondents and did not make any offer to the tenant or after his death to his heir until the matter reached the High Court on the second occasion and the writ petitions were being argued after more than two decades. Therefore, there is no conceivable reason to condemn the appellant for her insistence for the benefits under the consent decree or for any sympathy with the landlord-Bank or the Writ Petitioners before the High Court who took advantage of the situation. [562 BC]

1.3 The right of the appellant under the consent decree cannot be defeated in view of the final determination by the High Court on the earlier occasion, and the respondent-Bank is liable for making its undertaking good as well as for any suitable compensation for the gross delay of more than two decades since the completion of the new building. [562D]

1.4 As to the identification of the particular area in the new building to be allotted to the appellant, the matter is remitted to the executing court for reconsideration after permitting the parties to give any additional evidence they desire to offer without delaying the proceeding and to execute the decree by identifying the premises and giving its possession to the appellant. [562E]

2. In cases relating to immovable properties which are governed by the ordinary civil law, the High Court should not exercise its special jurisdiction under the Constitution unless the circumstances are exceptional. [562 G]

A **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5061 & 5062 of 1991.**

From the Judgment and Order dated 20.6.1990 of the Bombay High Court in Writ Petition Nos. 3154 & 3867 of 1986.

B **V.N.Ganpule and S.Ramachandran for the Appellants.**

Ejaz Maqbool and A.M.Khanwilkar for the Respondents.

The Judgment of the Court was delivered by

C **SHARMA, J. Special leave is granted.**

D 2. The appellant is the daughter and heir of Shripat Tukaram Jadhav, since deceased, who was in possession as a tenant of a portion of a building belonging to the respondent No. 3. The respondent filed a suit for eviction of Shripat on the ground that he needed the building for demolition and for reconstruction of a new one, which was disposed of by a compromise between the parties. According to the consent decree the tenant had to vacate the premises, and the respondent-landlord undertook to complete the reconstruction of the new building within a reasonable period and "to give possession of an identical (equal) area as in the original premises to the defendant, on a monthly rental and the defendant will have a right to an identical area in the new building". The decree further stated thus:

E "The right of the defendant to an identical area is an essential condition to this compromise."

F Accordingly the tenant vacated the premises in 1966 and the respondent No. 3 proceeded with the erection of the new building. However, the essential term of the compromise, entitling the tenant to the equivalent area therein was not respected by the respondent in spite of service of a notice served in this regard in November, 1967. Ultimately the tenant made an application for restoration of possession which was dismissed by the trial court on the ground

G that the same was not maintainable. The tenant took the matter to the first appellate court and thereafter to the High Court in Civil Application No. 1819/70; and while it was pending he died, and his heirs were substituted.

H 3. It was seriously contended on behalf of the respondent that the decree was not executable which was over-ruled by the High Court by its judgment dated 17.7.1975. However, it was further held that the appropriate remedy of

the tenant was by way of execution of the consent decree, and the case was accordingly remanded to the trial court with a direction that the proceedings initiated by the tenant would be treated as execution proceeding. The matter, thus, once more came before the first court for the purpose of execution of the consent decree, in the proceeding which was renumbered as Execution Case No. 1591/75. A

4. In the meantime, the respondent No. 3 inducted the present respondents 1 and 2 in the new building who resisted the delivery of possession, necessitating the appellant to file an application under Order 21 Rule 97 of the Code of Civil Procedure, out of which the present appeal arises and which was registered as miscellaneous application No. 696/78. B

5. The application was opposed by the landlord judgment-debtor as well as the obstructionists on the basis of a large number of frivolous grounds, including the plea that the decree being vague was not executable. The small causes court rejected the objections correctly, pointing out to the decision of the High Court in Civil Application No. 1819/70 and holding that neither the landlord nor his nominees were entitled to reagitate the questions finally settled by the High Court in favour of the appellant. C D

6. The obstructionists, however, did not give up and carried the matter in appeal before the District Judge, Pune, once more raising several technical grounds against the maintainability of the proceeding which were rejected by the District Judge. Two writ petitions, thereafter, were filed by the obstructionists and another person, all claiming to have been inducted by the respondent No. 3 in the new building as tenants. The High Court dismissed all the grounds raised in the writ petitions in view of the earlier findings of the High Court in Civil Application No. 1819/70, except one, namely, whether the decree could be executed by ejecting the writ petitioners from the areas in their possession. E F

7. After referring to the report of the Commissioner, appointed by the executing court, and other materials the High Court observed that the available evidence on the record did not positively establish that the tenements in possession of the writ petitioners were comparable to the premises in possession of the tenant in the old building. The Court also mentioned the offer made by the landlord respondent No. 3 which was not acceptable to the present appellant and expressed its displeasure on her attitude. Proceeding further, the learned Judge attempted to analyse the situation for finding out the comparative hardship to the parties and came to the conclusion that the writ petitioners deserved sympathy and there was no justification for the appellant to reject the offer made by the respondent No. 3 Bank. On these considerations the rule was made absolute against the appellant by the impugned judgment. G H

A 8. We have heard the learned counsel for the parties and have considered
the relevant circumstances, and in our opinion the High Court was not justified
either in entertaining the writ petitions or in deciding the merits of the dispute
against the appellant. In pursuance of a solemn compromise reached by the
tenant (appellant's father) and the landlord-respondent No. 3 the possession of
the premises was handed over to the landlord in 1966 on the express stipula-
B tions that on the construction of the new building the tenant would get an
identical area therein. The fresh construction was completed in 1967 and
instead of honouring the pledge given by it in the form of an "undertaking" the
respondent-Bank inducted the writ petitioners therein and did not make any
offer to the tenant or after his death to his heir until the matter reached the High
Court on the second occasion and the writ petitions were being argued in 1990.
C We do not, therefore, think that there is any conceivable reason to condemn the
appellant for her insistence for the benefits under the consent decree or for any
sympathy with the landlord-Bank or the writ petitioners before the High Court
who took advantage of the situations.

D 9. So far the merits of the matter are concerned, it must be clearly
understood that the right of the appellant under the consent decree cannot be
defeated in view of the final determination by the High Court on the earlier
occasion in Civil Application No. 1819/70 and the respondent-Bank must be
held liable for making its undertaking good as well as for any suitable
compensation for the gross delay of more than two decades since 1967.

E 10. As to the identification of the particular area in the new building to
be allotted to the appellant, the parties have led some evidence, but since we
have not examined the same, we cannot take a final decision on merits. The
judgment of the learned District Judge appears to be sketchy so far as this
aspect is concerned, and we, in the circumstances, remit the matter to the
executing court for reconsideration after permitting the parties to give any
F additional evidence they desire to offer without delaying the proceeding and to
execute the decree by identifying the premises and giving its possession to the
appellant. Before closing this judgment we would like to emphasise that in
cases relating to immovable properties which are governed by the ordinary
civil law the High Court should not exercise its special jurisdiction under the
G Constitution unless the circumstances are exceptional. This aspect has been
discussed by this Court earlier on several occasions

11. In the result the appeals/are allowed and the case is remitted to the
executing court for proceeding with the case expeditiously as indicated earlier.
The cost of these appeals assessed at Rs. 5,000 shall be paid by the respondent-
Bank to the appellant.

H
N.P.V.

Appeal allowed.