2025 INSC 1352

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 13801/2025
@SLP (C) No. 5813/2023

SHRI DIGANT **Appellant**

VERSUS

M/S. P.D.T. TRADING CO. & ORS. **Respondents**

O R D E R

1. Leave granted.

2. Heard learned Counsel for the parties and perused the record.

3. This appeal arises from an order dated 30.1.2023 passed by the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Writ Petition No. 4227/2021 by which the Writ Petition of the respondent was allowed, the judgment and order of the District Judge dated 16.6.2021 was set aside and the matter

was remanded to the Small Causes Court for deciding the suit expeditiously.

4. A Civil Suit No. 85 of 2014 was instituted by the appellant against the respondents, *inter alia*, for possession under Section 16(1)(g) and (n) of the Maharashtra Rent Control Act, 1999 ("1999 Act"). In the suit summons were served upon the defendants. The defendant Nos 2 and 3 did not appear despite service of summons therefore, *vide* order dated 19.04.2014, the suit was directed to proceed *ex parte* against them. Likewise, defendant No. 1 failed to appear therefore, *vide* order dated 24.06.2014, the suit was ordered to proceed *ex parte* against him. Thereafter, defendants applied for recall of the order directing suit to proceed *ex parte* against them. The application was allowed and they filed their written statements.

5. During the course of the suit proceedings, the advocate who represented the defendants applied for deletion of the name of the third defendent from the array of parties, which

was rejected *vide* order dated 26.11.2014, and, in between, he submitted *pursis* (Exhibit-42) informing the Court that he has not been provided instructions by his clients despite letter sent to them. However, the suit proceeded, evidence of the plaintiff was recorded and, ultimately, the suit was decreed on 04.03.2015.

6. Defendants preferred appeal against the judgment and decree of the Trial Court under Section 34 of the 1999 Act. In the appeal, the main ground urged on behalf of the defendants was that they were not given adequate opportunity to present their case in as much as when their counsel had submitted *pursis,* claiming no instructions, Court ought to have served a notice on them to engage another counsel to represent their case. It was also contended that the requisite procedure for withdrawal of *Vakalatnama* by a counsel, discharging him of his obligations to represent his client in a proceeding, was not followed.

7. The aforesaid aspect was dealt with by the Appellate Court in detail as could be gathered from paragraphs 13 to 25 of its judgment, reproduced below:

> **"13] The point No.1 relates to whether learned Trial Court was correct in proceeding further in view of pursis below Exh.42 filed by the advocate for respondent. Before scrutinizing this aspect, it is necessary to see what was actually transpired before the learned Trial Court. The learned advocate for appellants/ defendants forcefully argued that, no opportunity of hearing was given or followed by the learned Trial Court after filing pursis below Exh. 42 dated 26/11/2014. Before scrutinizing this particular aspect, I find it necessary to see and analyse the pursis below Exh.42. The Exh. 42 reflects that, it is simply stated by the learned advocate for defendants that, the defendants are not attending his office and therefore, he is not having any instructions to that effect. The Exh. 42 is also annexed with the office copy of notice dated 20/11/2014 and its postal**

RPAD receipts.

14] On careful reading of this particular notice, it is simply an intimation of prospective action which can be initiated by the learned advocate for defendants, if they did not contact him. The Exh. 42 annexed with the office copy of notice dated 20/11/2014 no where reflects that, it shall be treated as withdrawal of vakalatnama. The withdrawal of vakalatnama by advocate is having altogether different consequences than the formal pursis in the form of prospective future action intimated by the advocate to his client. The both proceedings invites different consequences in civil trial. They can not be treated at par when defendant himself is at fault.

15] Apart from this aspect, it is equally worth to note that the said notice was sent by RPAD by advocate for defendant. In this background, the burning and searching question is required to be answered by the appellants/ defendants as to

> **"Whether they had received notice dated 20/11/2014 by RPAD sent by advocate S.S.Sitani" ?.**

This particular question will determine the fate of the present appeal. The appeal memo filed by the appellants nowhere discloses any whisper or any response to this crucial aspect. It was incumbent upon the appellants to at least make firm statement about the notice dated 20/11/2014 issued by advocate Shri.S. S. Sitani by RPAD. The appellants/ defendants cannot built their appeal by not making any statement in this regard. Even during the course of final argument before this Court, neither the appellant nor their advocates are in position to answer this pinpointing question. The sufficient opportunity was afforded to the appellant to inquire and to make positive statement about the status of the said notice dated 20/11/2014 sent by RPAD. It was incumbent upon the appellants / defendants to either outrightly accept that, they had received this notice or outrightly deny about the receipt of such notice. The appellant cannot remain evasive in answering this crucial question. Moreover, the pursis below Exh. 42 annexed with notice is not a withdrawal of vakalatnama as contemplated under Advocates Act or the provisions of Paragraph No. 588

of Civil Manual.

16] Under such circumstances, merely blaming the Trial Court the Appellants cannot built their appeal. It is an easy excuse adopted by the appellants. The appellants are not ready to make any statement about the said notice sent by RPAD to them by their advocate. Moreover, it is also pertinent to note that, even after filing said pursis, the learned advocate Shri.S.S.Sitani on the same date participated in making submissions on application below Exh. 40. The Exh.40 was preferred by the defendant No.3 for deleting his name from the present proceeding. Though the learned advocate Shri. S.S. Sitani filed pursis below Exh. 42, still on the same day he participated in hearing below Exh. 40.

17] Moreover, the pursis below Exh.42 annexed with the notice dated 26/11/2014 is not valid notice / intimation to the Court about the withdrawal of vakalatnama as contemplated under Advocate's Act and Civil Manual. Therefore, the learned Trial Court rightly decided to ignore such pursis. I am very much conscious of the fact

that, it may result into firm approach looking towards the grounds of appeal preferred by the defendants. But the appellants cannot take the benefit of his own casualness and inaction at all level, even at the time of filing this appeal also or during the course of final hearing when neither appellants nor their advocate are ready to submit anything about the receipt of notice dated 20/11/2014. They can not play hide and seek in their pleadings by remaining silent about this important aspect.

18] The only ground raised by the appellants that, the learned Trial Court did not issue suo-moto notice after the receipt of information about Exh.42. The appellants are a businessman and they are not an ordinary litigants. Moreover, the pursis below Exh.42 is nowhere indicating the withdrawal of vakalatnma. So, under such circumstances the casual, lazy and indifferent litigant cannot blame the Court for not issuing notice to him. The casualness and indifferent attitude of the appellant is very much crystal clear, when he has refused to make any statement about the receipt or non receipt of

letter dated 20/11/2014 issued by advocate Shri. S.S.Sitani. It was also incumbent upon him to at-least make an inquiry with his advocate Shri. S.S.Sitani, once he came to know about the disposal of civil suit.

19] Here, at this point the learned advocate for appellants relied upon the ruling of Hon'ble Bombay High Court in the case of Govinda Bhagoji Kamable and others vs. Sadu Bapu Kamable and others reported in 2005(1) Mh.L.J. 651. I have carefully gone through the ratio laid down in this case law however, the facts of our case are altogether different. The notice dated 20/11/2014 along with pursis below Exh.42 is not withdrawal of vakalatnama. The advocate for defendants had rightly issued notice to his clients by RPAD. The notice sent by RPAD is having general presumption under Section 27 of the General Clauses Act that, it was duly received to the addressee. The act of the appellants about not making any statement about the said notice is sent by RPAD clearly distinguishes the present case from the ratio laid down in this case law. The act of the advocate to issue notice by

RPAD clearly demonstrates the positive act on his part. Similarly, the notice dated 20/11/2014 was only an intimation about the future course of action. There is general presumption that, the notice dated 20/11/2014 was duly received by the addressee(appellants). So, under such circumstances there was no occasion for the Trial Court to proceed further by treating the said no instruction pursis as withdrawal of vakalatnama as per procedure contemplated in Civil Manual. So, on these grounds, the ratio laid down in this case law cannot be made applicable to the facts of our case.

20] The learned advocate for appellants further relied upon the ruling of Hon'ble Bombay High Court Nagpur Bench in the case of Rameshkumar Vyankatswami Poona vs. Swami Vivekanand Cooperative Housing Society, Shrirampur and another reported in 2018 (6) Mh.L.J. 227. I have carefully gone through the ratio laid down in paragraph No.10, 12, 13, 14, 15 and 16 of the judgment. However, the facts of our case are altogether different. The moot question involved in this appeal is as to

whether the appellant can show their bona fides by making a statement about receipt or non receipt of notice dated 20/11/2014 issued by advocate Shri. S.S.Sitani. The appellant has conveniently chosen not to make any statement about the receipt or nonreceipt of said notice dated 20/11/2014. The appellant is very well aware that, his statement on either side will invite further consequences to prove his bonafideness in the present appeal. The appellants cannot conveniently take evasive stand from making any statement about the receipt or non receipt of said notice dated 20/11/2014. So, on this count alone, the ratio laid down in this case law are on completely different parameters than the facts of our case.

21] The learned advocate for appellant further relied upon the ruling of Hon'ble Supreme Court in the case of Rafiq and another vs. Munshilal and another reported in AIR 1981 Supreme Court 1400. I have gone through the ratio laid down in this case law. It is observed by their Lordship that, “dismissal of appeal for default of appellant's counsel and therefore, the party

should not suffer misdemeanor or inaction of his counsel". The principle laid down in this case law is universally accepted. However, the facts of our case are drastically different. The pursis below Exh.42 and the notice dated 20/11/2014 sent by RPAD to the defendants is distinguishing features. The defendants are not ready to say anything about the said notice and its receipt. The defendant cannot simply blame his previous counsel to seek the sympathy of this Court. The defendant is expected to come with clean and precise statement about the notice dated 20/11/2014.

22] It is now time and again observed that, by making evasive statements and blaming earlier advocates parties continue with the litigation before the same forum or the appellate forum. Sometimes, they go on with one step further by blaming with the Trial Court or appellate Court to protract the litigation. But, in present case the evasiveness on the part of the appellants / defendants is continue even at the stage of filing appeal memo or during the course of final arguments. The roznama of this case would demonstrate that, sufficient

opportunity was granted from time and again to the appellants to make the statement about notice dated 20/11/2014. So, on this count also, the ratio laid down in this case law is not applicable to the facts of our case.

23] The learned advocate for appellants further relied upon the ruling of Hon'ble Apex Court in the case of Goswami Krishna Murarilal Sharma vs. Dhan Prakash and others reported in (1981) 4 Supreme Court Cases 574 and Smt. Lachi Tewari and others vs. Director of Land Records and others reported in AIR 1984 Supreme Court 41. I have gone through the ratios laid down in both the case laws. However, the facts narrated as above in our case clearly makes an exception to the ratio laid down in these cases. Therefore, the ratio laid down in these two case laws are not applicable to the facts of our case.

24] In view of above discussion, the appellants cannot seek the extraordinary remedy of setting aside the judgment and decree merely on the ground that, his advocate filed no instruction pursis. Such extraordinary remedy

cannot be considered for simple reason as appellants were indifferent and evasive about the notice dated 20/11/2014. It would have been a different case if the appellant had made statement that, the notice dated 20/11/2014 was not received by him. The said fact about the receipt or non receipt of notice dated 20/11/2014 issued by advocate Shri.S.S.Sitani was within the exclusive knowledge of defendant, but he did not explain this before this Court.

25] The learned advocate for appellant also did not seek any information from the appellants in this regard and continue with filing evasive appeal on such grounds. I do not want to say anything more about this on the part of learned advocate for appellants. So, in view of above discussion, the course adopted by the learned Trial Court about pursis below Exh.42 annexed with notice dated 20/11/2014 is perfectly legal within the parameters of Advocates Act, Practice and Procedure as contemplated under Civil Manual issued by Hon'ble Bombay High Court in this regard. There is no withdrawal of vakalatnama by

advocate Shri. S.S.Sitani by way of merely filing copy of intimation notice below Exh.42. Hence, the point No.1 is answered in negative."

(Emphasis supplied)

8. The Appellate Court thereafter examined other aspects of the matter and dismissed the appeal *vide* order dated 16.06.2021.

9. Aggrieved by dismissal of their appeal, the respondents filed a petition under Articles 226/227 of the Constitution of India before the High Court. It is clear from paragraph 4 of the judgment of the High Court that the only point urged before the High Court was that the Trial Court gave no opportunity to the defendants to lead evidence after the counsel representing the defendants had submitted *pursis* (Exhibit-42), claiming no instructions.

10. To address the aforesaid submission, the High Court extracted Clause 660(4) of the Civil Manual. Clause 660(4) of the Civil

Manual as extracted in the impugned judgment reads thus:

> **"(4) *When an Advocate who has filed a Vakalatnama for a party wishes to withdraw his appearance, he shall serve a written notice of his intention to do so on his client at least seven days in advance of the case coming up for hearing before the Court*. Leave of the Court to withdraw appearance may also be applied for if the client has instructed the Advocate to that effect. The Advocate shall file a note in writing requesting the Court for permission to withdraw appearance and shall also file along with the note the letter of the client instructing him to withdraw his appearance or a copy of the intimation given to the client as above together with its written acknowledgment by the client. <u>The Court, if it is satisfied that no inconvenience is likely to be caused to the Court or the client may permit the Advocate to withdraw his appearance and while permitting the Advocate to do so may also impose such terms and conditions as it may deem proper either in public interest or in the interest of the parties</u>."**
>
> **(Emphasis Supplied)**

11. Thereafter, the High Court took into consideration Rule 8(4) of Chapter XXXII of Schedule VII of the Bombay High Court Appellate Side Rules, 1960, which has been extracted in the impugned judgment and is reproduced below:

> **"Rule 8 (4). When an Advocate who has filed a Vakalatnama for a party wishes to withdraw his appearance, he shall serve a written notice of his intention to do so on his client at least seven days in advance of the case coming up for hearing before the Court. Leave of the Court to withdraw appearance may also be applied for if the client has instructed the Advocate to that effect. The Advocate shall file a note in writing requesting the Court for permission to withdraw appearance and shall also file along with the note the letter of the client instructing him to withdraw his appearance or a copy of the intimation given to the client as above together with its written acknowledgment by the client. The Court if it is satisfied that no inconvenience is likely to be caused to the Court or**

the client may permit the Advocate to withdraw his appearance and while permitting the Advocate to do so may also impose such terms and conditions as it may deem proper either in public interest or in the interest of the parties."

12. After considering the afore-quoted provisions, the High Court observed:

"… where a counsel purports to withdraw his vakalatnama what is required, is a clear seven days advance notice to his client, prior to the date on which the matter is fixed for consideration. The nature and purpose for this is for enabling the litigant, to have an opportunity, either to continue with the same counsel or change counsel so that he may not go unrepresented in the proceedings."

13. The High Court thereafter, in paragraphs 11 and 12 of its judgment, observed:

"11. In the instant case, it is not in dispute that though the notice addressed by the counsel to the petitioner no.1, is dated 20/11/2014 (pg.63), the postal receipt indicates that it was

posted on 25/11/2014 at 14:52 hours, as against which, the no instructions pursis at Exh.42 has been filed on 26/11/2014 (pg.62). There was obviously, a clear-cut violation of requirement of Clause 660 (4) of the Civil Manual as well as Rule 8 (4) of the Rules of 1960 framed under Section 34 (1) of the Advocates Act by the High Court as there was no service of notice seven days in advance to the date fixed. That apart, there is nothing on record, to indicate that the notice dated 20/11/2014 posted on 25/11/2014 was ever served upon the petitioner no.1/tenant as no material in that regard, has been placed on record.

12. This would clearly indicate that the no instructions pursis (Exh.42/pg.62), has been merely accepted by the Court, on the face of it without ensuring that there was any service of the notice regarding withdrawal of Vakalatnama within the framework of Rule 8 (4) of the Rules of 1960 framed under Section 34 (1) of the Advocates Act by the High Court or Clause 660 (4) of the Civil Manual.”

14. Based on those observations, the High Court took the view that the defendant (i.e. the petitioner before the High Court) was deprived of opportunity to present its case and, therefore, it is appropriate to set aside the order passed by the Trial Court as well as the Appellate Court and remand the matter to the Trial Court for decision afresh.

15. Aggrieved by the order of the High Court, this appeal has been filed.

16. The submission of the learned counsel for the appellant is that between the date when the *pursis* (Exhibit-42) was submitted and the date by which the Trial Court decided the matter, the case had remained pending for a period exceeding three months yet, in between, no effort was made on part of the defendant to contest the proceedings. Besides that, the Court had not permitted withdrawal of *Vakalatnama* by the counsel representing the defendant and the *pursis* did not pray for

withdrawal of the *Vakalatnama*. Even otherwise, the procedure prescribed for withdrawal of a *Vakalatnama* is to put the litigant on notice to enable him to engage another counsel before the next date of hearing. The object of the procedure is not to let parties seek adjournment and defer court proceedings. Here, the counsel who represented the defendant had not withdrawn the *Vakalatnama* but had only claimed no instructions and along with the *pursis* had annexed letter sent to his client. As per the appellate court finding there was no claim of the defendants that the letter sent by their counsel was not served upon them. In such circumstances, if no instructions are provided by a litigant to his advocate, it is the fault of the litigant not of the advocate. Moreover, there was sufficient material on record to indicate that fault lay with the party and not the counsel. Further, there is nothing on record that any

proceedings were initiated against the advocate for his misconduct.

17. In those circumstances, it is submitted, a well-considered decision of the Appellate Court wherein the aforesaid issue was addressed in detail ought not to have been interfered with in exercise of supervisory jurisdiction under Article 227 of the Constitution of India where the Court, ordinarily, can correct jurisdictional errors only. Based on the aforesaid submissions, it was prayed on behalf of the appellants that the order passed by the High Court be set aside and the petition preferred before the High Court i.e. Writ Petition No. 4227 of 2021 be dismissed.

18. *Per contra*, learned counsel for the respondent has submitted that the High Court has taken into consideration the relevant Rules governing withdrawal of power and thereafter concluded that because of lawyer's conduct the defendants were deprived of

opportunity to lead evidence. Therefore, the order of remand calls for no interference.

19. We have considered the rival submissions and have perused the record carefully.

20. The only issue that fell for consideration of the High Court was whether, on account of defendants' lawyer's *pursis,* claiming 'no instructions', the trial court ought to have proceeded to decide the suit without ascertaining whether the defendants were duly informed about lawyer's withdrawal from the case.

21. Before we address the aforesaid issue, it would be apposite to consider the scope of High Court's power under Articles 226/227 of the Constitution of India while entertaining a challenge to a civil court's order passed in a suit or proceeding.

22. The scope of High Court's jurisdiction under Articles 226/227 fell for consideration before a three-Judge Bench of this Court in

Radhey Shyam & another v. Chhabi Nath & Ors.[1] **This Court held that judicial orders of civil courts are not amenable to a writ of *certiorari* under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction**[2]**.**

1[1] (2015) 5 SCC 423

2[2] Surya Dev Rai v. Ram Chander Rai & Ors. (2003) 6 SCC 675.

23. In the case on hand, the appellate court had considered in detail the issue as to whether the trial court was justified in proceeding with the case, without further notice to the defendants, after submission of *pursis* (Exh.42) by defendants' counsel, claiming no instructions. After a threadbare analysis and taking into consideration the surrounding circumstances, the appellate court held that the trial court committed no wrong in proceeding with the matter. The appellate court noticed that the advocate representing the defendants had claimed no instructions but not sought withdrawal of his *Vakalatnama* and the matter thereafter remained pending for over three months till it was decided in March 2015. In between no effort was made by the defendants to engage another lawyer. Moreover, the defendants did not come up with a case that their lawyer's notice was not served on them therefore, they could not engage another counsel. Besides that, the record also indicated that the

intention of the defendants was to delay the proceedings because earlier also the suit had proceeded *ex parte* against them though, later, those orders were recalled. Therefore, in our view, once the appellate court took into consideration all relevant aspects including the fact that *pursis* (Exh.42) did not seek withdrawal of the *Vakalatnama,* and withdrawal was not even permitted, there was no such jurisdictional error which warranted exercise of powers under Article 227 of the Constitution of India. The High Court without any justification went on to consider the procedure prescribed for withdrawal of *Vakalatnama* when neither withdrawal of *Vakalatnama* was permitted by the Trial Court nor the *pursis* prayed for its withdrawal. In such circumstances, the entire exercise of the High Court was misconceived. More so, when the view taken by the appellate court that defendant cannot take advantage of his own wrong was a plausible view based on materials available on record. Hence, in our

view, appellate court's order was not amenable to interference in exercise of jurisdiction under Articles 226/227 of the Constitution of India. The High Court clearly exceeded its jurisdiction under Article 227 of the Constitution in interfering with a well reasoned order of the appellate court.

24. As we notice that before the High Court except the aforesaid point no other point was pressed, and no other point arises for our consideration in as much as the evidence led by the plaintiff went unrebutted, we deem it appropriate to allow this appeal and restore the order of the trial court as affirmed by the appellate court.

25. The appeal is, accordingly, allowed. The order passed by the High Court dated 30.01.2023 is set aside. Writ Petition No. 4227 of 2021 shall stand dismissed. Parties to bear their own costs.

26. Pending application(s), if any, shall stand disposed of.

……J
[MANOJ MISRA]

……J
[JOYMALYA BAGCHI]

New Delhi;
November 18, 2025