

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

***WRIT PETITION NO. 3945 OF 2014.
Along with
CIVIL APPLICATION NO. 2918 OF 2014***

Johnson Dye Works Private Limited .. Petitioner / Applicant
Vs.
Smt.Bhanumati Keshrichand Jhaveri & ors. .. Respondents

Mr.Sean Wasoodew a/w Mr.Rupesh Mandhare, for the Applicant &
org. Petitioner.
Mr.Gautam Ankhad a/w Mr.Hemant Sethi, for Respondent No.4.

***CORAM: N.M.Jamdar, J.
Thursday 30 April, 2015***

Oral Order :

The Civil Application No.2918 of 2014 was placed for orders today. However, considering the controversy and the impugned order passed by consent of parties, the Writ petition itself is taken up for disposal.

2 Accordingly **Rule**, rule made returnable forthwith.
Respondents waive service.

3 The Petitioner has filed R.A.E Suit No.965/1427 of 2010 against the Respondents for eviction. The premises in question are Final Plot no.268, TPS-III, Mahim, Mumbai with buildings thereon at 16 Moghul Lane, Matunga-Mumbai. It is the case of the

Petitioner that the Respondents committed breaches of the lease deed and the property is required by the Petitioner bonafide for their own occupation. The Petitioner has prayed for a direction to the Respondents to hand over vacant and peaceful possession of the suit property and for *mesne* profits and for prayer of injunction.

4 In this suit, the Petitioner took out an application on 17 October 2012 seeking a direction to the Respondents to deposit an amount of Rs.5,85,80,203/-. According to the Petitioner, as per the lease deed dated 23 December 1938, the Respondents were supposed to pay all the municipal taxes and property taxes. It was also contended that the Municipal Corporation has issued a notice on 28 June 2012 stating that the premises may be auctioned for nonpayment of property taxes. The application was opposed by the Respondents. The learned Judge, Small Causes Court by order dated 13 March 2014 rejected the application. Thereafter the present Writ petition is filed.

5 The learned counsel for the parties have sought to raise various contentions as regards the liability to pay the taxes. Various factual and legal propositions have been advanced. However, the manner in which the application has been decided has to be taken note of. The application is rejected by the learned Judge, Small Causes Court, by the following order -

“Heard Shri Trivedi & Shri S.K.Vyas on behalf of Plaintiff and Defendants. Gone through written Synopsis of rejoinder and argument at Exh-47 and documents at Exh-

48. Ld. Counsel Shri Vyas relied upon authority and ratio laid down in Girish Gangadhar Agarwal & Hiteshkumar Hasmukha Vakaria 2009(6) Mh.L.J. Wherein it is held that the amount of taxes can be reimbursed by the land lord. Therefore liability to pay taxes, is of landlord at first instance and then only land lord can claim, amount paid by him towards taxes. Thus though it is stated in rejoinder at Exh-47 that cited authority is not applicable, however how and why it is not applicable is not mentioned hence application rejected with cost”.

The perusal of the order shows that the learned Judge has solely relied upon decision of the learned Single Judge of this Court in the case of **Girish Gangadhar Agrawal Vs Jiteshkumar Hasmukha Vakhariya** – 2009(6) Mh.L.J. Page 875. This decision arose in completely different context. Even the observations in this decision, which have been relied upon by the learned Judge, are in respect of service charges, wherein this Court had observed that where services are not offered, service charges will not be recoverable. Not only the proposition which the learned Judge has culled out from this decision is not discernible, it certainly could not have been made foundation for such a cryptic order, without discussing the rival contentions. The order being completely without reasons is liable to be set aside on that ground alone and it is accordingly set aside.

6 The petition is allowed by quashing and setting aside the order dated 13 March 2014. The application filed by the Petitioner on 17 October 2012 stands restored to file. The learned Judge, Small Causes Court will take up the application on priority basis,

in view of the notice issued by the Municipal Corporation, and decide the application latest by 30 June 2015. All contentions of both the parties are expressly kept open to be agitated on merits.

7 Rule is made absolute in above terms. In view of the disposal of the Writ petition, the Civil Application does not survive and is accordingly disposed of.

(N.M.Jamdar, J.)