

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO. 220 OF 2015
IN
CIVIL REVISION APPLICATION NO. 118 OF 2013

Mumtaz Iqbal Shaik Jain .. Applicant
V/s.
Mr. Angus D'Cunha .. Respondent

...

Mr. Rajesh Patil for applicant.
Mr. Dakshesh Vyas i/b. Mr. Rajiv Jadhav for respondent.

CORAM : M. S. SONAK, J.
DATE : SEPTEMBER 4, 2015.

P.C.:

1] Mrs. Mumtaz Iqbal Shaikh, the so called landlady instituted proceedings for recovery of possession of the suit premises inter alia on the ground of reasonable and bonafide requirement. The suit was decreed by the Small Causes Court and the Decree was affirmed by the Appellate Bench as well as this Court. The tenant, or in any case, the contemnor herein, who claimed to be tenant instituted Special Leave Petition (Civil) No. 24613 of 2013 before the Hon'ble Apex Court against the Judgment and Order dated 21.06.2013 made by this Court in CRA No. 118 of 2013. The Special Leave Petition was dismissed on 08.08.2013. However three months time was granted to the alleged contemnor to vacate the suit premises on filing usual undertaking before the Hon'ble Apex Court.

2. It is the case of the landlady that the contemnors - the respondents finally vacated the suit premises, but in the process of eviction, not only failed to make payment of electricity charges but also removed the electricity meter and caused extensive damages to the suit premises. The landlady, therefore, filed IA No. 1 of 2014, in Contempt Petition No. 98 of 2014 in SLP (C) No. 24163 of 2013, before the Apex Court, alleging contempt.

The Hon'ble Apex Court, in its order dated 16th January 2015 has observed and ordered as under.

ORDER

The High Court affirmed the judgment and order dated 01.11.2012 passed by the Appellate Bench of the Court of Small Causes, Mumbai in Appeal No. 326/2007 in RAE Suit No. 676/1273 of 1998. The said judgment and decree passed in favour of the petitioner-landlady on the ground of reasonable and bona fide need was upheld and no interference by the High Court was called for.

The alleged contemnor-respondent no. 1 moved this Court in SLP (C) No. 24613 of 2013 against the judgment and order dated 21.06.2013 passed by the Bombay High Court in CRA No. 118 of 2013.

This contempt petition has been filed for initiation of contempt against the alleged contemnors-respondents for their deliberate and willful violation of this Court's order dated 08.08.2013 as also the undertaking given by them on 20.08.2013.

Special Leave Petition (Civil) No. 24612/2013 was finally heard on 08.08.2013 and dismissed. However, three

months' time was granted to the alleged contemnor to vacate the suit premises on filing usual undertaking in this Court.

By filing I.A. No. 1 of 2014 in Contempt Petition No. 98 of 2014 in SLP (C) No. 24613 of 2013, the Petitioner-landlady has contended that the alleged contemnors-respondents not only failed in payment of electricity charges but also removed the electric meter and caused the following damages in the suit property :

- (1) Kitchen platform has been pulled and broken down. Washing area attached to the kitchen platform has been broken.
- (2) Flooring tiles of kitchen, servants' room have been damaged.
- (3) Glass windows have been broken.
- (4) Water connection removed.
- (5) Toilet attached to master bedroom has been damaged i.e. wated closet, flush tank removed. Wash basin removed.
- (6) Window panes broken down.
- (7) Walls have been damaged. Also observed that plasters of the walls have been removed and the bricks are freshly seen.
- (8) Electrical fittings removed and damage caused to the walls.

In support of the averments in the said I.A. , the petitioner – landlady has attached several photographs and other documents.

We have perused the affidavits and heard learned counsel appearing for the parties.

In our view, the matter need to be enquired into in order to find out as to whether the alleged contemnors – respondents have damaged the suit property and if so, whether the alleged contemnors- respondents are liable to pay damages for that.

We are therefore of the view that the matter is to be looked into by the Bombay High Court.

In the facts and circumstances of the case, we request the Bombay High Court to decide the claim made by the petitioner-landlady in the aforesaid interlocutory application filed in this contempt petition and to pass a reasoned order on merits.

Let the entire record of this contempt petition along

with I.A. No. 1 of 2014 be transmitted to the Bombay High Court with the aforesaid request.

This contempt petition stands disposed of accordingly.

It goes without saying that whoever will be aggrieved by the order that may be passed by the Bombay High Court may approach this Court by filing an appropriate application.

3] When this matter was called out for consideration in terms of the direction of the Hon'ble Apex Court, the parties have agreed to settle the matter, without prejudice to the pendency of Criminal Case No.380/SW/2013, in the Court of Metropolitan Magistrate, Bombay, upon following terms;

a] That alleged contemnor shall pay and the petitioner shall accept an amount of Rs. 1,00,000/- by way of damages;

b] In pursuance of the aforesaid, the learned counsel for the alleged contemnor has handed over today in the Court, to the petitioner who is present in the Court, a demand draft dated 02.09.2015 drawn on HDFC Bank (019947) in an amount of Rs.1,00,000/-, which demand draft has been duly accepted by the petitioner in the presence of the Court;

c] The payment of aforesaid amount of Rs. 1,00,000/- by the alleged contemnor is without prejudice and without accepting any of the allegations in Civil Application, Contempt Petition, IA and in Affidavit-in-Rejoinder made before the Apex Court;

d] The aforesaid Criminal Case No. 380/SW2013, shall be decided by the Metropolitan Magistrate on its own merits and in accordance with law and without in any manner being influenced by the payment which the alleged contemnor has made, basically in order to give a quietus to the issue raised in this Civil Application.

4] In view of the aforesaid agreement between the parties, it will be appropriate if the proceedings, in Civil Application No. 220 of 2015 are disposed of. Accordingly, same are disposed of.

5] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original Judgment/Order.