

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.131 OF 2015
IN
CIVIL REVISION APPLICATION NO.587 OF 2009

Maharaj Singhji Mehta.] ... Applicant

Versus

Tirthalli Gopalkrishna Prabhu.] ... Respondent

Mr. Bhupesh Dhumatkar i/b M/s. Jhangiani Narula & Associates for Applicant.

Mr. Drupad Patil i/b Jai Kanade for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 03, 2015

P. C. :-

1. By this Civil Application, the landlord seeks appointment of a Court Receiver for two purposes :-

- (a) To support the contention that the tenant does not actually reside in the suit premises;
- (b) to effect certain urgent repairs to the suit premises.

2. Insofar as the first purpose is concerned, the request for appoint of a Court Receiver cannot be acceded to. In the first place,

the purpose for appointment of a Court Receiver or a Court Commissioner, is not to enable the parties to collect evidence in respect of their respective cases. That apart, the tenant has filed an Affidavit that he is a senior citizen of about 77 years and suffers from several ailments. The same is the position with the tenant's wife. In the Affidavit, it is candidly stated that though the tenant was residing in the suit premises, on occasions, they stay at hospitals or with their daughter for the purposes of treatment and convalescence. The learned Counsel for landlord points out that the electricity indicate zero consumption. There is sufficient explanation in the Affidavit filed by the tenant in this regard. Accordingly, no Court Receiver or Court Commissioner can be appointed for the purpose of collecting evidence.

3. Insofar as the question of repairs is concerned, this Court, on 29/06/2015, had directed the tenant to file an Affidavit to indicate the nature of repairs and time-schedule within which the same shall be undertaken. Accordingly, daughter of the tenant, as Constituted Attorney for the tenant, has filed an Affidavit indicating the nature of repairs and has further stated that such repairs can be carried out within a period of 1 to 3 months. The expenses for such repairs are indicated to be Rs.1,26,000/-.

4. Normally, the responsibility of effecting repairs is upon the landlord. However, in this case, the entire responsibility, at least at this stage, cannot be placed upon the landlord. Accordingly, it would

be appropriate if the landlord deposits a sum of Rs.50,000/- in this Court within a period of four weeks from today. In case, such amount is deposited within four weeks from today, the tenant is directed to carry out the repairs indicated in the Schedule to their Affidavit dated 15/07/2015 by expending the balance amount by themselves. The amount spent by the landlord as well as the tenant shall be taken into consideration at the time of final decision in Civil Revision Application No.587 of 2009. This is only an interim arrangement pending the final disposal of Civil Revision Application No.587 of 2009, so that the suit premises are maintained in a proper condition.

5. In case, the landlord do not deposit the amount of Rs.50,000/- within four weeks from today, the tenant shall, nevertheless, carry out the repairs but in respect of such repairs, the tenant shall be entitled to adjustment to the extent of Rs.50,000/- out of the compensation amount directed to be deposited in this Court as condition for interim relief. The tenant to file compliance report by 12/10/2015.

6. Civil Application is disposed of in the aforesaid terms.

(M. S. SONAK, J.)