

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7039 OF 2015

Shyam D. Shetty .. Petitioner
-Versus-
Smt. Rajwanti Lalji Vishwakarma (Sharma) .. Respondent

Mr.Dushyant Pagare for petitioner'sMs.Neeta Karnik i/b. Ms. Ashwini Kesar and Rajesh Mudholkar for respondent.

CORAM : M.S.SONAK, J.

DATE : 19th August 2015.

P.C.

1] This petition challenges the judgements and decrees dated 12th July 2007 and 21st April 2015 made by the trial court and the appeal court directing eviction of the petitioner on the ground default in payment of rent.

2] The trial court had in fact decreed the suit for eviction on the ground of default in payment of rent as also reasonable and bonafide requirements. Appeal court has, however, ordered eviction only on the ground of default in payment of rent. This means that there are concurrent findings of fact insofar as the aspect of default

in payment of rent is concerned.

3] Mr.Pagare, learned Counsel for the petitioner submitted that the petitioner had engaged an Advocate to appear for him before the trial court. The Advocate advised the petitioner that the petitioner's presence was not necessary before the trial court. However, the Advocate did not prepare any written statement and, thereafter, failed even to cross examine the witnesses on behalf of respondent landlord. For all these, Mr.Pagare submits that the petitioner should not be made to suffer. Mr. Pagare further submitted that during the pendency of proceedings, the petitioner has deposited arrears of rent as well as the rent as may have been accrued and the same has been accepted by the respondent landlord, though without prejudice. On this ground Mr.Pagare submitted that the petitioner deserves yet another opportunity in the matter of his defence. The appeal court order which has failed to taken into consideration these aspects, is vitiated by jurisdictional error.

4] Ms. Karnik, learned Counsel for the landlord submitted that this is a case where there are concurrent findings of fact recorded

by the two courts. Besides, the record would indicate that from October 1998, inspite of service of demand notice, the petitioner has failed to pay the rents in respect of the suit premises. In such circumstances, the petitioner is not entitled to any further indulgence.

5] Having heard the learned Counsel for the parties and perusing the records, there is no case made out for interference with the impugned orders. The two courts have already recorded concurrent findings of fact on the aspect of default in payment of arrears of rent. In this case, notice demanding rents had been issued in the year 1998 and the same had been duly received by the petitioner. Despite such notice, the petitioner failed to pay or deposit the arrears. Thereafter, in the course of proceedings, the petitioner had yet another opportunity to deposit the arrears of rent within 90 days from the date of service of summons. Again the petitioner failed to avail this opportunity as well. In these circumstances, there is no reason to interfere with the concurrent findings of fact recorded by the two courts on the aspect of default. Such finding is amply borne by the material on record and the same cannot be regarded as

perverse.

5] In this case, the petitioner was duly served with the summons of the proceedings before the trial court. The petitioner did attend the proceedings through his Advocate. Substantial opportunity was granted to the petitioner to file his written statement. In fact, the records indicate that the summons was served upon the petitioner on 21st December 2001 but up to 24th February 2005, since no written statement was filed, necessary orders were made to proceed without the written statement of the petitioner.

6] In a matter of this nature it is not sufficient to merely lay blame upon the Advocate. There is no material placed on record with regard to the so called advice of the said Advocate, regards non attendance of the proceedings. In any case, it is also for the petitioner to pursue the matter and not lightly take up the defence that he having engaged an Advocate, the petitioner is absolved of his responsibility to further participate in the matter or to take up some defence and, thereafter, make good the same.

7] The circumstance, that during the pendency of proceedings but much after the prescribed period of 90 days, consequent upon the service of summons, the petitioner has paid the disputed rents and the same have been accepted by the respondent landlord, though without prejudice, cannot make any dent to the concurrent decrees made by the two courts. Admittedly, the acceptance of rent during the pendency, was specifically indicative as being without prejudice. Accordingly, it is not open for the petitioner to contend that the decrees of eviction are required to be set aside on account of such acceptance.

8] At this stage, the learned Counsel for the petitioner states that the petitioner might want to take recourse against this judgement and order before the Apex Court and for that purpose, seeks interim stay on the execution of decrees for a period of six months.

9] Ms.Karnik, learned Counsel for the respondent landlord opposes grant of any such reliefs. It is directed that, eviction decrees may not be executed for a period of three months from today. This would, however, be subject to the petitioner, within a

period of two weeks from today, filing usual undertaking that he and his family members continue in possession of the suit premises and they shall not create any third party rights or part with possession of the suit premises. Such undertaking to be filed by not only the petitioner but also other adult members of his family. Before filing such undertaking, copies thereof be furnished to the respondent. In case no such undertaking is filed within two weeks from today, then, there shall be no restraint upon the execution of the eviction decree. Petition disposed of accordingly.

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

(M.S.SONAK, J.)