

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1027 OF 2014

Maleka Banoo W/o. Abdul Hamid	]	... Petitioner/
Chhatanki.	]	(Orig. Defendant)

Versus

Yasin Gyasuddin Zariwala and Anr.	]	... Respondents/
		(Orig. Plaintiff Nos.1 & 2)

Mr. S. P. Srivastava for Petitioner.
 Mr. Y. E. Mooman a/w Ms. Manisha B. Gawde for Respondent Nos.1
 and 2.

WITH
WRIT PETITION NO.7694 OF 2014

Yasin Gyasuddin Zariwala and Anr.	]	... Petitioners/
		(Orig. Deft. Nos.1 & 2)

Versus

Maleka Banoo W/o. Abdul Hamid	]	
Chhatanki and Ors.	]	... Respondents

Mr. Y. E. Mooman a/w Ms. Manisha B. Gawde for Petitioners.
 Mr. S. P. Srivastava for Respondents.

CORAM :- M. S. SONAK, J.
DATE :- JUNE 18, 2015

P. C. :-

1. Rule.
2. At the request of and with the consent of the learned Counsel for parties, Rule is made returnable forthwith.
3. In Writ Petition No.1027 of 2014, the challenge is to the order dated 20/09/2013 made by the Appellate Bench of Small Causes Court, directing the Petitioner to pay a sum of Rs.4,500/- (Rupees Four Thousand Five Hundred Only) to the Plaintiff from 01/07/2007 till the final disposal of the suit. Clause 5 of the operative order reads thus :

“(5). The defendant is at liberty to seek exemption to comply with the order dated 14.08.2013 in RAD Suit No.1785 of 2007 in view of this order.”
4. In Writ Petition No.7694 of 2014, the challenge is to the order dated 14/08/2013 made by the Small Causes Court in R.A.D. Suit No.1785 of 2007. This order directs the Plaintiff in the said suit to deposit arrears at the rate of Rs.2,000/- (Rupees Two Thousand Only) along with permitted increases as specified.
5. The learned Counsel for Petitioners in Writ Petition No.7694 of 2014 contended that since the Plaintiff in R.A.D. Suit

No.1785 of 2007 is not at all tenant in respect of the suit premises, there was no question of any direction to the said plaintiff to deposit arrears of rent. There is no need to go in this contention at this stage. Merely because the expression '*arrears of rent*' has been employed in the order dated 14/08/2013, that by itself, is not at all indicative or determinative of the status of the Plaintiff in the said suit. Ultimately, that is a matter which will have to be decided in the said suit based upon the evidence. Accordingly, there is no reason to interfere with the order dated 14/08/2013.

6. Insofar as the order dated 20/09/2013 is concerned, again although the direction applied for was for payment of compensation at the rate of Rs.25,000/- per month. The Appeal Bench, upon appreciation of the material on record, has determined the compensation at Rs.4,500/- per month. Accordingly, there is no reason to interfere with the said order dated 20/09/2013 as well, save and except one aspect.

7. Clause (5) of the order grants liberty to the Defendant in L.E. & C. Suit No.8/8 of 2009 to seek exemption in the matter of compliance with order dated 14/08/2013 in R.A.D. Suit No.1785 of 2007. In the facts and circumstances of the present case, there was no necessity to grant such liberty. The order dated 14/08/2013, was filed invited by the Plaintiff in R.A.D. Suit No.1785 of 2007. The amount of Rs.4,500/- as determined in the order dated 20/09/2013, should, therefore, be exclusive of the amount referred to in the order dated

14/08/2013. Clause (5) of the operative portion of the order dated 20/09/2013 is therefore set aside.

8. Rule is disposed of to the aforesaid extent in both the petitions. There shall be no order as to costs.

9. Time for depositing the amount is extended by six weeks from today.

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

(M. S. SONAK, J.)