

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

WRIT PETITION NO.10106 OF 2015

Chawla Highway Carriers

.. Petitioner

Versus

Rukshana Abdul Aziz Sopariwala and others

.. Respondents

WITH

WRIT PETITION NO.10113 OF 2015

Chawla Cargo Movers

.. Petitioner

Versus

Rukshana Abdul Aziz Sopariwala and others

.. Respondents

**Mr. A. S. Khandeparkar i/by Khandeparkar & Associates, for the
Petitioner in both the Petitions.**

Ms. J. P. Thakkar, for the Respondent Nos.1 to 3 in both the Petitions.

CORAM : R.M. SAVANT, J.

DATE : 26th NOVEMBER, 2015

PC.

1. The above Petitions take exception to identical orders both dated 30.07.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, rejecting the Revision Application by the Petitioners as being not maintainable.

2. The Petitioners in both the Petitions are the Defendants in the suits in question being RAE Suit No.1418 of 2014 and RAE Suit No.1417

of 2014 which have been filed by the Respondents who are the landlords on the ground of bonafide requirement, additions and alterations as also nuisance. In the said suits, the Plaintiffs i.e. the Respondents herein filed an application for temporary injunction, in which application amongst the prayers sought was the prayer that the Defendants i.e. the Petitioners in both the Petitions be directed to deposit arrears of rent from 01.10.2013 to 31.09.2014, thereafter from October 2014 till disposal of the concerned suit. The Defendants in turn also filed an applications being Exh.14 and Exh.15 for allowing them to deposit arrears of rent from October 2013 to September 2014 and to further allow them to deposit rent at Rs.2850/- per month till the decision of the suit. The said application came to be allowed by the Trial Court by orders both dated 12.03.2015 passed in each of the applications. However, prior thereto the Learned Judge of the Small Causes Court observed that such deposit by the Defendants/tenants would be without prejudice to the rights of the parties nor would it take away any right which has arisen in favour of the landlords. In the context of the challenge raised in the present Petitions clause (2) of the said order dated 12.03.2015 is material and is reproduced hereinunder :-

“2. Defendant shall deposit an amount of Rs.51,300/- (Rupees Fifty One Thousand Three Hundred Only), with simple interest @ of Rs.15% p.a., towards rent from October, 2013 to March 2015, within two weeks from today.”

It seems that the Defendants applied for a certified copy on 17.03.2015 and the certified copy was furnished to them on 27.03.2015 i.e. after the period of two weeks as fixed by clause (2) as above was over. The Defendants thereafter filed applications seeking extension of time being applications Exh.19 and Exh.20. The said applications were replied to on behalf of the Respondents and the extension sought was opposed to on behalf of the Respondents/original Plaintiffs. The Trial Court considered the said applications and by orders both dated 02.05.2015 rejected the same. The ground sought to be advanced by the Defendants that the amount could not be deposited as the certified copy was not made available to them within time, did not commend acceptance to the Trial Court as the Trial Court was of the view that the Defendants were required to deposit the amount, and the office could have very well verified the order from the record.

3. Aggrieved by the said orders dated 02.05.2015, the Defendants filed two Revisions being Revision Application No.202 of 2015 and 203 of 2015 which were dismissed on the ground that the same were not maintainable having regard to the nature of the orders that was sought to be challenged by the said Revision Applications. Hence, the challenge in fact in the above Petitions is to the order dated 02.05.2015 passed by the Trial Court refusing extension of time to make the deposit. It

would have to be borne in mind that the Trial Court had allowed the applications Exh.14 and 15 and permitted the Defendants to deposit the amount for the period mentioned in the said orders dated 12.03.2015. The Trial Court has rejected the said applications on the ground that the reason put forth by the Defendants for not depositing the amount was not acceptable. In my view, since the Trial Court has deemed it appropriate to permit the Defendants to deposit the amount without prejudice to the rights and contentions of the parties as also without affecting the right if any that has accrued to the landlord on account of non-deposit of the rent, the Trial Court ought to have extended the time. In that view of the matter the impugned orders dated 02.05.2015 passed by the Trial Court as also the orders dated 30.07.2015 passed by the Appellate Bench of the Small Causes Court rejecting the Revision Applications as not maintainable are set aside. The applications Exh.19 and Exh.20 in turn would stand allowed. Needless to state that the said deposit would be without prejudice to the rights and contentions of the parties as also without prejudice to the rights accrued to the landlords if any. Since there is a delay in depositing the amounts, the Defendants to pay costs of Rs.2000/- in each of the above Petitions to the Respondents within two weeks from date. However, the Learned Counsel for the Respondents states that the said costs may be paid over to the Small Causes Court Advocate's Library.

The same to be done within two weeks from date. The deposit of the amounts in both the matters also to be made within two weeks from date. No further extension of time would be granted. The Petitions are allowed to the aforesaid extent and to accordingly stand disposed of.

[R.M. SAVANT, J]