

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1562 OF 2014

Bhanudas Laxman Patil,
Age: 58 years, Occ: Service,
R/o. Zilla Parisahd Quarter,
At/Post. Tq. Chopada,
Dist. Jalgaon.

... Petitioner

Vs.

Arun Ramrao Chavan,
Age: 54 years, Occ: Service,
R/o: Flat No.3, Ushakiran Apartment,
Shrikrushna Colony, Jalgaon,
Tq. and Dist. Jalgaon.

... Respondent

Mr. S.P. Brahme, Advocate for the petitioner.
Mr. V.B. Patil, Advocate for the respondent.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 08-08-2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.

2. The petitioner is purportedly aggrieved by an order dated 09-12-2013 passed by the executing court 2nd Jt. C.J.J.D., Jalgaon upon exhibit-68 in regular darkhast no. 131 of 2003 partly refusing the request made under the application for directions to the respondents to deposit an amount of Rs. 36,962/- towards the municipal taxes for the period from 1995-96 to 2010-11.

3. The decree as drawn is re-produced hereinbelow for ready reference:

"1. The plaintiff's claim in Regular Civil Suit no. 59 of 2000 is hereby decreed with costs.

2. The plaintiff is entitled to execute decree of possession on the defendant's failure to vacate the suit flat within one month.

3. Plaintiff is entitled to the arrears of rent at the rate of Rs.600/- per month plus municipal taxes from 01.07.1997 to 31.10.1999 alongwith 9 per cent interest and costs.

4. The claim of notice charges is disallowed.

5. Enquiry for future mense profit under O.XX Rule 12 of The Code of Civil Procedure be made for damages by the plaintiff till he gets vacant possession of the suit flat.

Decree be drawn up accordingly.

6. The standard rent in Civil Miscellaneous Application No. 229/1999 is fixed at Rs.600/- per month plus municipal taxes.

7. The defendant appears to have deposited the arrears of rent at the rate of Rs.500/- per month from July 1997 to April 2003. He is directed to deposit in the court the difference of rent within one month from the date of this order by following the provisions of law.

8. The plaintiff is at liberty to withdraw the amount of rent already deposited and to be deposited by the defendant in the court.

Parties in Civil Misc. Appln. No.229/1999 to bear their own costs."

4. After taking into account aforesaid decree, the executing court appears to have considered that, the petitioner-decree holder-plaintiff would be entitled recover municipal taxes from 01-07-1997 to 31-10-1999 and further that the submissions on behalf of petitioner-decree holder that the possession has been received back only on 04-07-2011 is of little consequence in the

face of decree as aforesaid. The court in the operative part of the impugned order had directed the decree holder-petitioner to furnish calculations of municipal taxes for the period from 01-07-1997 to 31-10-1999 and further had directed to issue warrant for attachment of movable of judgment-debtors for the amount municipal of taxes as would be informed by the decree holder for aforesaid period.

5. In the face of aforesaid situation, the contention on behalf of the petitioner now being advanced is that since the respondent had retained possession till 2011, he would be liable to pay municipal taxes is not sustainable on several counts *inter alia* primarily for the reason that that would tantamount to re-writing the decree and going behind same which would not be permissible under the execution proceedings.

6. In the circumstances, I do not find any substance in the writ petition and the same stands dismissed. Rule stands discharged.

(SUNIL P. DESHMUKH)
JUDGE