IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.399 OF 2016

Abid Abbasbhai Bootwala … Petitioner
Vs.
Suresh Dinkar Bodhe (decd) through heirs & another … Respondents

Mr. P. B. Shah i/b. Mr. Kayval Shah for Petitioner.
Mr. M. K. Irani i/b. Mr. A.B. Tajane for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 24TH OCTOBER 2016

P.C. :

Heard Mr. Shah, learned Counsel for petitioner and Mr. Irani, learned Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.2' has challenged the judgment and order dated 17.12.2014 passed by the learned 2nd Additional Judge, Small Causes Court, Pune in Miscellaneous Application No.42 of 2014 as also the judgment and order dated 20.11.2015 passed by the learned District Judge-21, Pune in Miscellaneous Civil Appeal No.41 of 2015. By these orders, the Courts below dismissed the application filed by the original defendants under Order 9, Rule 13 of C.P.C. for setting aside ex-parte decree dated 26.09.2012 passed in Civil Suit No.45 of 2011.

3. After arguing the Petition for quite some time, Mr. Shah states that petitioner is present in the Court. He has tendered photocopy of his driving licence, which is taken on record and marked 'X' for identification. Upon taking instructions from the petitioner, Mr. Shah states that upon giving two years time to vacate the suit premises,

petitioner will not press the Petition. He assures that on or before 18.11.2016, petitioner and all adult family members using the suit premises will file usual undertaking, after giving advance copy to the other side. He further assures that petitioner will not seek further extension of time for vacating the suit premises.

4. Mr. Irani submits that the Suit was decreed under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999. He, therefore, submitted that instead of giving two years time to vacate, petitioner may be given time upto and inclusive of 30.04.2018 subject to filing usual undertaking.

5. In view thereof, Petition is disposed of as not pressed in the following terms:

a. Petitioner accepts the correctness of the decree passed by the trial Court and that his tenancy stands terminated;

b. Petitioner and all the adult members using the suit premises will give usual undertaking on or before 18.11.2016, after giving advance copy to the other side incorporating therein that,

(i) they are in actual possession of the suit premises and nobody else is in possession;

(ii) they have so far neither created third party interest nor parted with possession of the suit premises;

(iii) they will hereafter neither create third party interest nor part with possession of the suit premises;

(iv) they will pay directly to the respondent the arrears of rent, if any, within 8 weeks from today and will go on regularly paying the rent till handing over possession to the respondents on or before 30.04.2018;

(v) they will handover vacant and peaceful possession of the suit premises to the respondents on or before 30.04.2018.

6. In view thereof, notwithstanding withdrawal of the Petition as not

pressed, eviction decree shall not be executed on or before 30.04.2018 subject to the petitioner and all adult members using the suit premises filing undertaking in the aforesaid terms on or before 18.11.2016. It is made clear that if the undertaking is not filed on or before 18.11.2016, interim order shall stand vacated and respondents will be at liberty to execute the decree. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab