

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2901 OF 2016

Mr.Ramesh Ganesh Saxena .. Petitioner

Vs.

Mr.Satish Natwarlal Shah and others .. Respondents

Mr.Dilip Rai i/b Ms.Aruna Singh, for the Petitioner.

Mr.N.G.Samant a/w Mr.Sandeep V.Mahadik, for Respondents No. 1 to 5.

CORAM : M.S.KARNIK, J.
DATE : 16th APRIL, 2016

P.C. :

. The petitioner- original landlord filed the Suit for eviction before the Court of Small Causes at Mumbai (Bandra Branch). By the judgment and order dated 24/06/2014, Suit was decreed and original defendant No.1 (respondents No. 1 to 5 herein) – tenant was directed to hand over vacant and peaceful possession of the suit premises to the Petitioner- plaintiff within a period 3 months from the date of the decree.

2. The original defendant No.1 – tenant filed an Appeal bearing No. Civil Appeal No. 24 of 2014 before the Court of Small

Causes at Bandra, Mumbai. An application at Exhibit 6 was filed by the tenant for staying execution of the judgment and decree passed by the trial Court. By an order dated 16/01/2015, the Appellate Court was pleased to stay the decree on certain terms and conditions. One of the condition was a direction to the original defendant No.1 (respondents No. 1 to 5 herein) to pay mesne profit or compensation from the date of the decree till final disposal of the Appeal @ Rs.6,000/- per month. The original defendant No.1 (respondents No. 1 to 5 herein) was further directed to deposit arrears of compensation from the date of the decree till January 2015 within one month from 16/01/2015.

3. The petitioner by filing an application at Exhibit 16 prayed for withdrawal of the mesne profit/compensation. The Appellate Court by the impugned order dated 18/12/2015 below Exhibit 16 was pleased to permit the petitioner to withdraw Rs.500/- per month from the date of the decree till final disposal of the Appeal from the amount of compensation of Rs.6,000/- per month to be deposited by the respondents.

4. The Appellate Court proceeded on the footing that as the mutually agreed rent of the suit premises was Rs.500/- per month, in view of the ratio laid down by the Apex Court in the case of Atmaram

Properties, the landlord is not entitled to withdraw the entire amount, but he is entitled to withdraw the amount only equivalent to the standard rent.

5. The petitioner takes exception to this order. Learned Counsel for the petitioner has relied upon a decision of the Apex Court in the case of **Anderson Wright And Co. Vs. Amar Nath Roy And Ors. reported in AIR 2005 Supreme Court 2457.**

6. In my opinion, it would be in the interest of justice, if the Appellate Court considers the application at Exhibit 16 afresh also in the light of the law laid down by the Apex Court in the case of **Anderson Wright And Co. (supra).**

7. The Appellate Court to re-consider the application at Exhibit 16 afresh and decide on its own merit and in accordance with law. Consequently, the impugned order dated 18/12/2015 passed below Exhibit 16 in Appeal No.24 of 2014 in R.A.E. Suit No. 470/889 of 2010 by the Court of Small Causes at Bandra, Mumbai (Appellate Bench) is quashed and set aside. Exhibit 16 is remanded back to the Appellate Court for a fresh consideration.

8. I am informed that the Appeal is fixed for final hearing on 11/07/2016. The Appellate Court is requested to decide the application at Exhibit 16 preferably before 11/07/2016. Writ

Petition is accordingly disposed off with no order as to costs.

9. I must not be understood to have expressed any opinion on the merits of the controversy and the Appellate Court is free to decide application at Exhibit 16 on its own merits.

(M.S.KARNIK, J.)