

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

CIVIL APPLICATION NO. 234 OF 2016

IN

WRIT PETITION NO. 7052 OF 2000

Smt. Shakuntala Shivaji Kadam

... Applicant
(Orig-petitioner)

Vs

Smt. Rajia Begum Islam

... Respondent

Mr. K. N. Kore for the Applicant. ...

CORAM : K. K. TATED, J.
DATE : 7 APRIL, 2016

P.C. :

1 Heard the learned counsel Mr. Kore for the applicant-
original petitioner.

2 Though the respondent is duly served, none appeared
on her behalf when the matter was called out for hearing.

3 Advocate for applicant placed on record the affidavit of
service.

4 By this civil application, the applicant-tenant/defendant
seeks direction from this Court to the plaintiff to handover the
possession of suit property i.e. Room No. H.W.9-55-1-2, Hanuman
Nagar, Khar Danda, Mumbai-400052. He submits that, in the
present proceeding this Court by order dated 19th December 2010

admitted writ petition and granted interim relief in terms of prayer clause 'B' on usual terms. The defendant failed to comply the said order within stipulated time. Hence he moved before this Court on 19th April 2010. This Court on that date extend time by 8 weeks to comply the order dated 19th December 2000. Thereafter again the defendant preferred the Civil Application No. 2269 of 2010 for further extension. That application was allowed by this Court by order dated 8th September 2010 and granted 6 weeks time. In order dated 8th September 2010 this Court specifically stated that if the defendant failed to comply the order dated 19th April 2010 within stipulated time, interim relief granted in the Writ Petition will stand vacated without further reference to the Court.

5 Hence the Respondent/plaintiff filed execution application and obtained possession of the suit premises on 8th January 2016. Therefore the tenant preferred the present civil application for restoration of possession of the suit premises.

6 The learned counsel for tenant submits that, the tenant is ready and willing to deposit the entire arrears as per order dated 19th December 2000, before the trial court. He submits that in the interest of justice this Hon'ble Court be pleased to restore the

possession of the suit property i.e. Room No. H.W.9-55-1-2, Hanuman Nagar, Khar Danda, Mumbai-400052, in favour of the defendant. He submits that if the present application is not allowed irreparable loss will be caused to the applicant. He submits that the Writ Petition already admitted by this court and same is pending for hearing and final disposal on its own merits. He submits that as on today the defendant do not have any premises for her residential purpose. Considering these facts this Hon'ble Court be pleased to allow the present civil application.

7 I have heard the learned counsel for applicant-tenant at length. There is no dispute that for non-compliance of the order dated 19th December 2000 passed by this court the applicant lost the possession of suit premises. Till today, the applicant has not complied with the said order i.e. deposit of arrears of rent. As the respondent has obtained possession of the suit premises by following due process of law and the applicant failed to deposit the arrears of rent in spite of two extensions, I do not find any reason to entertain the application on the basis of above mentioned submissions. I am of the opinion that applicant has failed to make out any case for allowing this application.

- 8 Hence civil application is stand rejected.
- 9 Hearing of Writ Petition No. 7052 of 2000 is expedited.

(K. K. TATED, J.)