

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1786 OF 2013

Shri. Dnyaneshwar Ramchandra
Jadhav

...Petitioner

Versus

Late Yesodabai Keshavrao Thorat
(Deshmukh) And Lrs and Anr.

...Respondents

....

Mr. P.P. Goyal, Advocate for the Petitioner.

Mr. Suresh Dubey, Advocate for Respondent No.2.

....

CORAM : R. G. KETKAR, J.

DATE : 24th June, 2016

P.C.

1. Heard Mr. P.P. Goyal, learned Counsel for the petitioner and Mr. Suresh Dubey, learned Counsel for respondent No.2, at length. Mr. Dubey states that respondent No.2 is the only contesting respondent being the plaintiff. Hence, notice on respondent No.1(a) is dispensed with.

2. Rule. Mr. Dubey waives service for respondent No.2. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 15.12.2012 passed by the learned Judge, Small Causes Court, Pune below Exhibit-5. By that order, the learned trial Judge rejected the application made by the petitioner for stay of the execution of the decree.

4. Respondent No.1, hereinafter referred to as the 'plaintiff' has instituted Regular Civil Suit No.416/1999 under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act'). The suit was partly decreed on 2.4.2008. Aggrieved by that decision, defendants No.1 and 7 preferred Civil Appeal No.379/2008. That appeal was dismissed on 23.12.2010. Aggrieved by these decisions, C.R.A. No.301/2011 was preferred in this Court. That C.R.A. was disposed of on 16.11.2011 with liberty to the applicants therein to file review application seeking review of the order passed by the appellate Court in view of paragraph-29 of that decision. Accordingly Review Application was filed on or about 31.1.2012. As there was delay of 23 days in filing Review Application, Civil Application No.126/2012 was filed on 4.1.2012. Pending that

application, Civil Application No.6/2012 was filed on 31.1.2012 for stay of the execution of the decree. In that Civil Application, application at Exhibit-5 was filed on 31.1.2012 for stay of the execution of the decree. By the impugned order, the learned trial Judge rejected the application. It is against this order, Writ Petition is instituted.

5. During the course of hearing of this petition, I suggested to Mr. Dubey to consider giving consent for condoning the delay as also staying execution of the Appellate Court's decree so that the Review Petition can be disposed of in a time bound manner. Mr. Dubey submits that the petitioner is in arrears of rent and has not paid rent from 1992. He submitted that by consent, the delay in filing the Review Application may be condoned as also pending the Review Application the decree of the Appellate Court may be stayed subject to the petitioner depositing arrears @ Rs.10 per month from 1.1.1992 till 30.6.2016 in the trial Court and the respondents may be permitted to withdraw that amount unconditionally. He submitted that the applicants may be restrained from creating third party interest and parting with possession of the suit

premises.

6. In view thereof, by consent of the parties, the Petition is disposed of in the following terms :

- [i] Civil Application filed by the petitioner for condoning the delay in filing Review Application stands allowed and the delay in filing Review Application is condoned.
- [ii] Application made by the petitioner for stay of the decree passed by the trial Court stands allowed subject to (i) the petitioner herein neither creating third party interest nor parting with possession (ii) depositing the arrears of rent @ Rs.10/- per month from 1.1.1992 to 30.6.2016 in the District Court within four weeks from today under intimation in writing to the Advocate appearing for the respondent in the District Court. Upon such deposit being made, the respondents are permitted to withdraw the amount unconditionally.
- [iii] It is made clear that in case the petitioner does not

deposit the amount within four weeks from today, interim order shall stand vacated and the impugned order shall stand revived without further reference to the Court and the respondents will be at liberty to execute the decree. If the amount is deposited, the learned District Judge is requested to dispose of the Review Application as expeditiously as possible and in any case within six weeks from production of the authenticated copy of this order.

[iv] Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

[v] All parties, including the District Court, shall act upon the authenticated copy of this order.

(R. G. KETKAR, J.)