

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2896 OF 2016

Pheroze Farmoroze And Co.
and others

...Petitioners

Versus

Mr. Russi Jehangir Jeejeebhoy
and Anr

...Respondents

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Mr. Vishwajit Sawant a/w. Z.A.K. Najam-es-Sani & Prabhakar
Jadhav, Advocate for the Petitioners.

Mr. G.S. Godbole, Senior Advocate a/w. Dinzoo Zaiwalla a/w.
Charin Zapa Shiya i/b. Niranjana & Co. for the Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 30th JUNE, 2016

P.C.

1. Heard Mr. Vishwajit Sawant, learned Counsel for the petitioners and Mr. G.S. Godbole, learned Senior Counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 9.12.2015 passed by the learned Judge, presiding over Court Room No.15 of the Small Causes Court at Mumbai below Exhibit-9 in R.A.N. Application No.25/SR of 2015. By that order, the learned trial Judge allowed the application made by

respondent No.1 for fixing interim standard rent and for directing the petitioners to deposit in the Court an amount of Rs.1,72,427.16/- or as such other amount as Court thinks fit and for directing the applicant to continue to deposit in the Court every month an amount of Rs.9,454.96/- or such other amount as Court may think fit per month till disposal of application.

3. In support of this petition, Mr. Sawant has invited my attention to :

- (i) Indenture of lease dated 24.12.1992 and in particular clause-3 to contend that the agreed monthly rent was Rs.5000/-, clause-4 to contend that respondent No.1 agreed to pay all existing and future rates, taxes and outgoings whatsoever for the time being in respect of the demised premises to the Condominium/Municipal Authorities, clause-7 to contend that respondent No.1, at the request of the petitioners and at the entire risk and costs of the petitioners agreed to take all necessary steps to install a lift exclusively for the use of the

petitioners/their permitted assigns.

- (ii) Consent terms dated 26.9.2000 and in particular clauses-6, 7 and 8 to contend that the petitioners agreed to contribute a sum of Rs.12 Lacs towards their complete share for repairs and that in no circumstances plaintiffs therein shall make claim or demand from the petitioners any sum exceeding Rs.12 Lacs irrespective of the fact that the amount of expenses of the repair may increase or decrease and a further sum of Rs.5 Lacs towards the installation of new lift in the said building, clause-11 thereof to contend that the petitioners undertook to pay to the plaintiffs therein additional sum of Rs.5 Lacs being the costs for installation of new lift and/or replacement of old lift, which sum was to be paid after the plaintiffs therein obtaining necessary permission from the concerned authorities for installation and/or replacement of the lift. The plaintiffs therein undertook that in case lift is not installed or replaced within three months from the

date of payment, amount shall be refunded or returned to the petitioners within a week thereafter.

(iii) Complaint in R.A.E. Suit No.662/1067 of 2007 wherein reference is made to the declaration dated 24.12.1992 executed simultaneously with the execution of indenture of lease dated 24.12.1992. In paragraph-9(i), respondent No.1 herein contended that the trustees of the the Lady Jerbai Jeejeebhoy Trust were compelled to execute a separate declaration dated 24.12.1992 in which they purported to agree to renew said indenture of lease for a total period of 40 years on the same terms and conditions except the rent payable for the last term of 20 years commencing from 1.1.2012 would be double the existing rent of Rs.10,000/- per month.

(iv) Letter dated 29.8.2013 addressed by respondent No.1 herein to the petitioners wherein respondent No.1 claimed :

(a) arrears of basic rent and other permitted increases,

- (b) arrears of the petitioners share of property taxes, for the period from 1.4.2000 to 30.9.2013, and
 - (c) reimbursement to be made by the petitioners towards the share of outcome referred by Jehangir Building Condominium.
- (v) Reply dated 25.10.2013 given by the petitioners wherein the petitioners reiterated that the basic rent is Rs.5,000/- per month. The petitioners gave calculations in respect of revised monthly rent which included yearly increase @ 5% per annum and 4% per annum for the period from 1.4.2000 to 31.3.2013.
- (vi) Letter dated 30.10.2013 addressed by the petitioners to the Advocate for the plaintiff. Without prejudice to the petitioners right to file Standard Rent, Interim and Ad-interim Standard Rent Application as also without prejudice to whatsoever stated by the petitioners in reply dated 25.10.2013, the

petitioners forwarded cheque in the sum of Rs.24,95,404.25/- in respect of rent and permitted increase and property taxes.

- (vii) Letter dated 26.3.2015 addressed by the petitioner to the first respondent enclosing therewith cheque of Rs.1,72,427.16/-.
- (viii) The claim made by the first respondent/plaintiff towards the water charges, electricity charges, repair and maintenance charges etc..
- (ix) The standard rent application being R.A.N. No.25/SR/2015 filed by the petitioners herein under Section 11 of the Maharashtra Rent Control Act, 1999 (for short, 'Act')
- (x) Letter dated 1.6.2015 addressed by the first respondent to the petitioners herein. It was *inter alia* stated thus :

“A) The compensation with permitted increases (including service tax) towards the fourth floor premises, is due and payable for the period from

1.9.2013 to 31.3.2015 amounting to Rs.3,35,856/-.

- B) The property tax towards fourth floor premises, is due and payable for the period from 1.10.2013 to 31.3.2015 amounting to Rs.5,84,559/-.
- C) Furthermore, we have received demand from the condominium towards outgoings aggregating to Rs.40,62,881/- the details of which are enclosed herewith for your information. Since you are in actual occupation, use and enjoyment of the suit premises, it is only just and reasonable that the liability of payment of Condominium outgoings should be upon you. Kindly make payment of the above within one month.”

. Respondent No.1 returned the cheque for Rs.1,72,427.16/- sent by the petitioners to them.

- (xi) Letter dated 8.6.2015 addressed by the first respondent to the petitioners enclosing therewith compensation bills for the month of April, May, June, 2015. For three months, the first respondent raised demand of Rs.18,648/- per month.

4. Mr. Sawant submitted that the indenture of lease dated 24.12.1992 as also reply dated 25.10.2013 given by the petitioners clearly shows that the basic rent is Rs.5,000/- per

month. Alternatively as per the declaration dated 24.12.1992 the basic rent would be Rs.10,000/- per month. Mr. Sawant submitted that according to the bills raised by the first respondent, the monthly compensation which includes the service tax @ 12.36, 14% comes to approximately Rs.18,000/- per month. As against this, the learned trial Judge has directed the petitioner to deposit Rs.1 Lac per month as and by way of interim compensation. He further submitted that while entering into the consent terms, the petitioners did not accept/admit their liability for payment of the repair charges of the building. He further submitted that respondent No.1 did not make payment of repair charges to the condominium and without making payment to the condominium towards the repair charges has claimed repair charges from the petitioner. He submitted that the impugned order suffers from several errors of law apparent on the face of record and is also perverse and, therefore, is liable to be set aside.

5. On the other hand, Mr. Godbole supported the impugned order. He submitted that the order passed by the learned trial Judge is purely discretionary. Having regard to the

area in possession of the petitioner and its location, the learned trial Judge was fully justified in directing the petitioner to deposit the interim standard rent @ Rs.1 Lac per month. He submitted that unless the petitioners demonstrate that the impugned order is perverse, this Court, will not exercise the powers under Article 227 of the Constitution of India. He further submitted that because of the change made by the Municipal Corporation in fixing the annual rateable value viz. on the basis of capital value method, the first respondent has called the petitioner to make the payment towards the repair charges. In fact in the past, the petitioner had also made payment towards the repair charges. He invited my attention to :

- (i) Clauses 4, 6, 7 and 11 of the consent terms dated 26.9.2000.
- (ii) communication dated 1.6.2015 addressed by the first respondent to the petitioner.
- (iii) The calculations of B.M.C. towards the property taxes from 1.10.2013 to 31.3.2015 based on the capital value method.

. He submitted that the building where the suit premises is situate has a lift and the petitioners are using the said lift. In addition to that the petitioners want first respondent to install new lift and for that purpose undertook to pay sum of Rs.5 Lacs to the first respondent subject to the first respondent obtaining necessary permission from the concerned authorities and in case the lift is not installed or replaced within three months from the date of payment, said amount would be refunded within a week thereafter.

6. In rejoinder, Mr. Sawant submitted that as per the case of the first respondent, the monthly rent is about Rs.9000/-. The impugned order directs the petitioner to deposit Rs.1 Lac which is grossly exorbitant. He, therefore, submitted that the Petition requires consideration.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute the indenture of the lease was entered by and between the petitioner and the first respondent. Clauses 3, 4 and 7 thereof read as under :

“3. The Lessees doth hereby covenant with the Lessors as follows:-

- (a) To pay the said monthly rent of Rs.5,000/- hereinbefore mentioned without any deductions on or before the 10th day of each and every English calender month.
- (b) To pay to the Lessors all permissible increases that may be levied hereafter in respect of the premises, the payment of the outgoings being the responsibility of the Lessors.

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4. The Lessors do hereby for themselves their heirs, executors and administrators and/or their/his assigns covenant with the Lessees and their permitted assigns as follows :

- (a) To pay all existing and future rates, taxes and outgoings whatsoever for the time being in respect of the demises premises to the Condominium/Municipal Authorities etc.
- (b) During the term of the lease to perform and observe the terms and conditions and covenants of the Condominium so far as they relate to the demised premises and not to do or suffer to be done anything whereby the lease of the premises in favour of the Lessees may be avoided/forfeited or in any manner affected to the prejudice of the Lessees.

- (c) That the Lessees/their permitted assigns so long as they shall pay the rent hereby reserved and perform the covenants on their part therein contained, may hold and quietly enjoy the demised premises during the said term without any interruption by the Lessors or any person claiming under or on instructions from them.
- (d) That the Lessees would be entitled to assign their entire interest under the Lease without any prior permission written or oral by the Lessors so long as such assignment is to a respectable person or a reputed firm or corporation and provided further that such assignment of the entire interest of the Lessees is made on or before the 31st day of December, 1993.

7. The Lessors shall at the request of the Lessees and at the Lessees entire risk and costs take all necessary steps to install a lift exclusively for all necessary steps to install a lift exclusively for the use of the Lessees/their permitted assigns. The Lessors however, take no responsibility in the event of the Condominium refusing such permission or imposing such terms and conditions as it may be deem fit.”

8. It is also not in dispute that Long Cause Suit No.4420/1999 was instituted by the Board of Managers of Jehangir Building Condominium wherein the petitioners herein were defendant No.4. In that suit, compromise terms were

entered into between the plaintiffs and defendant No.4. Insofar as defendants No.1, 3 and 5 were concerned, the suit was withdrawn for want of prosecution. Clauses-4 to 7 and 11 of the consent terms read thus :

- “4.** It is agreed by and between the parties that the building known as Jehangir Building situate at 133, M. G. Road, Fort, Mumbai – 400 023 (hereinafter referred to as “the said Building”) requires major repairs, interalia, to the rear portion and the sanitary block as the same have developed huge vertical, horizontal and diagonal cracks, settlement of rear portion flooring, load bearing walls and flooring including the roof and the terrace of the said building to prevent leakage from the terrace of the said building and such other affected portions to strengthen the soundness and for the safety of whole of the said building in general.
- 5.** It is agreed by and between the parties that the Plaintiffs shall carry out all the necessary repairs of the said building as per the report dated 6th September, 2000 of M/s. Vora & Associates, Consulting Engineers.
- 6.** It is agreed by and between the parties that the Defendants No.4 shall contribute a sum of Rs.12,00,000/- (Rupees Twelve lacs only) towards their complete share for repairs to the said building and a further sum of Rs.5,00,000/- (Rupees Five lacs only) towards the installation of new lift in the said building.
- 7.** It is agreed by and between the parties that

the Defendants No.4 shall contribute Rs.12,00,000/- towards their share for repairs of the said building irrespective of the total expenses. It is further agreed that the balance of costs of repairs shall be contributed by the members of the Plaintiffs. It is understood between the parties that the Defendants No.4 shall not be liable to contribute and/or the Plaintiffs shall in no circumstances make claim or demand from the Defendants No.4 any sum exceeding Rs.12,00,000/- irrespective of the fact that the amount of the expenses of the repair may increase or decrease.

- 11.** The Defendants No.4 undertakes to pay to the Plaintiffs the additional sum of Rs.5,00,000/- (Rupees Five lacs only) being the costs for installation of new lift and/or replacement of the old lift such sum to be paid after the Plaintiffs have obtained the necessary permission from the concerned authorities for installation and/or replacement of the lift. The Plaintiffs also undertake that in case lift is not installed or replaced within 3 months from the date of payment, the amount would be refunded or returned to the Defendants No.4 within a week thereafter. ”

9. It is also not in dispute that the petitioners are in possession of the commercial premises admeasuring 6000 sq. ft. and also mezzanine floor admeasuring 3000 sq. ft.. The premises are situate at Mahatma Gandhi Road. The learned trial Judge after considering the location of the suit premises and its area held that the normal and usual returns for such premises

in such a prime locality in Mumbai would be in lacs per month.

10. The learned trial Judge also noted that Jahangir Building Condominium recovered Rs.31,73,356/- from the first respondent for annual maintenance charges of the premises in question and the said fact was not in dispute. Learned trial Judge also observed that the condominium charges are meant for keeping the building in good condition and, therefore, it is a legitimate expense. It was not disputed that the first respondent had made payment of Rs.31,73,756/- to Jahangir Building Condominium. The learned trial Judge, therefore, observed that the claim made by the first respondent was not flimsy claim and the claim is necessary for keeping the suit building in good condition. Learned trial Judge also referred to the fact of payment of Rs.12 Lacs by the petitioners as per consent terms towards the contribution of the petitioners towards the repairs of the building. The learned trial Judge thought it appropriate to direct the petitioners to deposit some just and reasonable amount towards the rent in the Court or to pay to the landlord. Considering the nature of the premises in question and the area and also the location as also the fact that the recurring

outgoings of the landlord in respect of the premises in question and that condominium charges are recovered by Jahangir Building Condominium from the first respondent, the learned trial Judge directed the petitioners to deposit Rs.1 Lac per month in the Court from 1.9.2013 till 30.11.2015 and continue to deposit Rs.1 Lac towards rent till the decision of the main application.

11. In the light of the aforesaid discussion I do not find that the petitioners are liable to pay interim rent @ Rs.5,000/- per month or Rs.10,000/- per month or Rs.18,000/- per month as submitted by Mr. Sawant. As noted earlier, the petitioners have paid Rs.12 Lacs as per the consent terms dated 26.9.2000 towards their contribution for repairs of the said building. The petitioners had also paid Rs.24,95,404.25/- in respect of rent and permitted increase and property taxes as is evident from letter dated 30.10.2013. *Prima facie* the contention raised by Mr. Sawant that the petitioners did not accept/admit their liability for payment of the repair charges of the building cannot be accepted. This is not supported by the consent terms dated 26.9.2000 and letter dated 30.10.2013.

12. In view thereof, I do not find that the learned trial Judge committed any error in passing the impugned order. It cannot be said that the impugned order is perverse being based on no evidence or that same is contrary to material on record. While passing the impugned order, the learned trial Judge has kept in mind all the relevant factors while passing the impugned order. Hence no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

13. Mr. Sawant submitted that in any case the learned trial Judge was not justified in directing deposit of Rs.1 Lac from 1.9.2013. At the highest, the learned trial Judge should have directed the petitioner to deposit Rs.1 Lac per month from the date of filing of the application for fixation of the standard rent. I do not find any merit in the submission having regard to the fact that the claim is made by the Corporation from 1.9.2013.

14. At this stage, Mr. Sawant orally applies for continuation of the ad-interim order dated 9.2.2016. He submits that the petitioner has deposited Rs.13 Lacs, without prejudice to the rights and contentions of the parties and subject to

further orders that may be passed in the Writ Petition. In view thereof, notwithstanding dismissal of the Writ Petition, ad-interim order shall continue for a period of four weeks from today subject to the clear understanding that no further extension shall be sought for and granted. Mr. Zaiwalla submits that the first respondent may be permitted to withdraw Rs.13 Lacs deposited by the petitioner in this Court. Respondent No.1 is permitted to withdraw the amount unconditionally which will be subject to the outcome of the main R.A. & E. Application. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)