

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

WRIT PETITION NO. 2116 OF 2016

Bank of Baroda		..Petitioner.
	Vs	
Taralaxmi Kantilal Shah		.. Respondent

Mr. V.Y.Sanglikar, Advocate for Petitioner.
Mr. R.D.Soni a/w Gaurav A. Sawant, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 05/10/2016

PC:

1. Heard Mr.V.Y.Sanglikar, learned counsel for the petitioner and Mr.R.D.Soni, learned counsel for the respondent at length.
2. Rule. Mr.Soni waives service for the respondent. 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, hereinafter referred to as 'defendant', has challenged the Judgment and order dated dated 13.1.2016 passed by the learned Judge presiding over Court Room No.19 of the Small Causes Court at Mumbai below Exhibit-20 in T.E.Suit No.171/209 of 2012. By that order, the learned trial Judge allowed the application Exhibit-20 made by the respondent-plaintiff and directed the defendant to pay or deposit rent at the

rate of Rs.2,76,000/- per month by deducting TDS from September 2015 to January 2016 on or before 10th February 2016. The learned trial Judge also directed the defendant to continue to pay or deposit rent at the same rate from February 2016 onwards on or before 10th day of each month. The plaintiff is permitted to withdraw the amount as and when deposited by the defendant.

4. It is not in dispute that the defendant has paid rent upto August 2015. The question is whether the defendant is liable to pay rent from September, 2015 onwards. Mr. Snglikar submitted that the defendant had issued notice dated 17.4.2015 calling upon the plaintiff to take possession of the suit premises on or before 30.6.2015. The defendant has thereafter issued notice dated 22.8.2015 calling upon the plaintiff to take possession of the suit premises on or before 31.8.2015. There is some dispute between the parties as regards passing of decree in terms of prayer clause (a) of the suit and consequently marking of satisfaction of the said decree. The plaintiff has also objected the application at Exh.19 filed by the defendant on 9.9.2015 on the ground that offer of surrender was conditional.

5. In my opinion, the learned trial Judge should not have disposed of the application in the manner in which the same is decided without permitting the parties to lead evidence for the

purpose of finding out as to whether the defendant was at fault for not handing over possession or whether the plaintiff was at fault for not taking over possession. This issue will have to be decided after permitting the parties to adduce evidence in this regard.

6. In view thereof, by consent of the parties, the order dated 13.1.2016 is set aside and Application Exhibit-20 is restored to the file of the learned trial Judge. Parties are at liberty to adduce evidence only on this limited issue before the trial Court. The learned trial Judge is requested to permit the parties to adduce evidence on this limited issue and is requested to dispose of the application as expeditiously as possible and preferably within six months from production of the authenticated copy of this order.

7. Rule is made absolute in the aforesaid terms with no order as to costs. All questions in this regard are expressly kept open. All parties including Small Causes Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)