

Sequeira

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

***CIVIL APPLICATION NO. 1267 OF 2016
IN
WRIT PETITION NO. 3237 OF 2001***

Prakash Mohanlal Adwani.	.. Applicant
<i>In the matter between</i>	
Gunda Govind Chikhale	
(since deceased through his legal heirs)	
1.A Prabhakar Gunda Chikale & ors.	.. Ori. Petitioner
<i>Vs</i>	
Prakash Mohanlal Adwani.	.. Respondent

Mr.Umesh Mankapure a/w Pallavi Kambale, for Applicant in CAW No.1267 of 2016 & org. Respondents.
Mr.Ajay Magdum i/b S.S.Patwardhan, for the Respondent.

***CORAM : N.M.Jamdar, J.
Thursday, 15 December 2016.***

P.C. :

This Civil Application is taken out for vacating the interim relief granted by this Court in Writ Petition No.3237 of 2001 on 7 December 2001.

2. The Applicant-Respondent who is the original Petitioner has made a grievance that the original Petitioner has consistently defied the orders of the Court in respect of payment of rent. It is stated that the Applicant had not deposited the rent after the suit was decreed on

20 June 1992. It is further stated that in Civil Application No.1519 of 2006 which was disposed on 8 August 2006, this court had directed the Respondent-original Petitioner to deposit the money in the executing Court. It is stated that since the Respondent-original Petitioner is not paying the rent, stay be vacated.

3. Heard Mr.Umesh Mankapure, the learned counsel for the Applicant and Mr.Ajay Magdum, the learned counsel for the original Petitioner.

4. Mr.Umesh Mankapure, the learned counsel for the Applicant has drawn my attention to the order passed in Civil Application No.2730 of 2008 dated 2 February 2009 wherein this application was to be listed along with the Writ Petition and it was made clear that if tenant fails to deposit even one instalment of future rent the interim relief will stand vacated. The Respondent-original Petitioner was directed to deposit monthly compensation in respect of the suit premises on or before fifth of every English calendar month. It is stated that if Respondent-tenant is in arrears he shall deposit all the outstanding. This civil application came up on board on 24 November 2016, the following order was passed and matter was adjourned by way of last chance.

'By an order dated 10th December 2010, liberty has been given to the Applicant to move for vacating interim relief. This civil application is filed in April 2016. Till date no reply is filed. S.O. 1st December 2016 by way of last chance.'

On 1 December 2016 following order was passed.

'Though reply is not filed as on date, the learned Counsel for the Respondent makes a statement that all the arrears are cleared. In view of this statement made, time to file reply is extended by period of two weeks from today.'

Till date no reply is filed. The learned counsel for Respondent-original Petitioner makes an oral statement that all dues are cleared. The learned counsel for the Applicant controverts this position. The learned counsel for the Respondent-original Petitioner states that the Petitioner has not contacted the advocate. The matter is being adjourned from 24 November 2016. Today when various communication facilities are available it is not possible to believe that the Respondent-original Petitioner is unable to contact his advocate. Therefore, no commitment on oath is being made that all arrears are being cleared, inspite of opportunities. In the circumstances, the assertion of Mr.Mankapure that the Respondent is in arrears of rent will have to be accepted. Accordingly, the Civil Application is allowed in terms of prayer clause (b).

(N.M.Jamdar, J.)