

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8752 OF 2016

Chandrabhaga Shantaram Khare / Khadye ... Petitioner
Vs.
Jitendra Mangalbhaj Jhaveri and another ... Respondents

Mr. Sumit Raghani for Petitioner.
Mr. M. A. Shukla for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 16, 2016

P.C. :

Heard Mr. Raghani, learned Counsel for the petitioner and Mr. Shukla, learned Counsel for the respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.1' has challenged the judgment and order dated 18.02.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai below exhibit-6 in Appeal No.393 of 2014. By that order, the appellate Court allowed application exhibit-6 made by the defendant No.1 and stayed execution and operation of the judgment and decree dated 30.07.2014 passed by the learned trial Judge in R.A.E.Suit No.457 of 2010 subject to the condition of defendant No.1 depositing the sum of Rs.9,000/- per month from the date of the decree as compensation for the use and occupation of the suit premises during the pendency of the Appeal. Defendant No.1 is directed to deposit the arrears of compensation either in lumpsum or in three equal monthly installments from February 2016 on or before 5th day of each calendar month. On such deposit being made, the office is directed to invest that amount in Fixed Deposit of one year and the same is to be renewed on yearly basis till further orders. Defendant No.1 was injuncted from

parting with possession of the suit premises or creating any third party interest in respect of the suit premises during the pendency of the Appeal.

3. In support of this Petition, Mr. Raghani reiterated the submissions advanced before the appellate Court. He submitted that defendant No.1 is working as a housemaid and earns only Rs.700/- per month. It will be beyond her capacity to comply the impugned order. If she does not comply the impugned order, the stay shall stand vacated and respondent No.1-plaintiff will be in a position to execute the decree. In short, the decree will be executed and appeal will be rendered infructuous. Defendant No.1 is a widow. Even on humanitarian ground, the impugned order deserves to be modified. He, therefore, submitted that the impugned order may be modified considering the fact that the defendant No.1 is a widow and her monthly income is Rs.700/-.

4. On the other hand, Mr. Shukla has invited my attention to the findings recorded by the learned trial Judge in paragraphs 12 and 13 and submitted that defendant No.1 was not served at the address of the suit premises. Suit summons was served on defendant No.2 at the suit address. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Respondent No.1 has instituted Suit against the defendant no.1 and respondent No.2, hereinafter referred to as 'defendant No.2', *inter alia* seeking possession of the suit premises on the ground of - (i) unlawful subletting [Section 16(1)(e) of the Maharashtra Rent Control Act, 1999 (for short 'Act')]; (ii) non-user of the suit premises by

defendant No.1 without reasonable cause for the purpose for which they were let out for continuous period of 6 months immediately preceding the date of the Suit [Section 16(1)(n) of the Act] as also (iii) change of user. While decreeing the Suit, the learned trial Judge has considered the submissions advanced on behalf of the defendant No.1 that she is working as a housemaid and her monthly income is Rs.700/- to 800/-. In paragraph 12, the learned trial Judge has observed that one LG Air Conditioner of 1.5 ton is installed in the suit premises. In paragraph 13, the learned trial Judge has considered the electricity consumption as also electricity bills. It was observed that prior to 2000, the monthly bill was Rs.500/-. From 2000 till March 2010, the electricity bill increased to Rs.1123/- for the month April 2010. The learned trial Judge also noted that defendant No.1 was not served at the suit address and the summons was served on defendant No.2 at the suit address. In view thereof, I do not find that the appellate Court committed any error in observing in paragraph 11 that decree was passed against the defendant No.1 on the ground of unlawful subletting as also non-user and that, therefore, it is not necessary to take into account the income of defendant No.1. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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