

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5432 OF 2016

Mrs. Santoshikumari Lakhpat Mehta ...Petitioner
Versus
Mr. Jayprakash Bansilal Raka And Anr. ...Respondents

**WITH
CIVIL APPLICATION NO.1168 OF 2016
IN
WRIT PETITION NO.5432 OF 2016**

....
Mr.Drupad Patil, Advocate for the Petitioner.

Mr. S.S. Kulkarni, Advocate for Respondents No.1 and 2.

....

CORAM : R. G. KETKAR, J.

DATE : 15th July, 2016

P.C.

1. Heard Mr.Drupad Patil, learned Counsel for the petitioner and Mr.S.S. Kulkarni, learned Counsel for respondents No.1 and 2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 19.4.2016 below Exhibit-43 as also the judgment and order dated 30.4.2016 below Exhibit-49 in Civil Appeal No.410/2014 passed by the learned Adhoc District Judge-1,

Pune. By order dated 19.4.2016 below Exhibit-43, the learned District Judge allowed the application made by respondents No.1 and 2, hereinafter referred to as the 'plaintiffs', for vacating the stay to the eviction decree granted on 19.8.2014 in the appeal. By order dated 30.4.2016 below Exhibit-49, the learned District Judge rejected the application made by the petitioner, hereinafter referred to as 'defendant', for stay of the execution of the eviction decree and seeking permission to deposit Rs.3,10,000/-.

3. After hearing both sides, by order dated 17.7.2015 passed by this Court in Writ Petition No.8149/2014, the Petition preferred by the defendant was allowed and the stay to the eviction decree was granted subject to the defendant depositing Rs.7000/- per month. The plaintiffs thereafter took out Review Petition No.126/2015 seeking review of the order dated 17.7.2015. After hearing both sides, by order dated 10.3.2016, this Court allowed the Review Petition. This Court dismissed the main petition with costs of Rs.1 Lac payable by the defendant to the plaintiffs within four weeks from the date of the order. Appellate Court was directed to ensure that such costs are

indeed paid by the defendant to the plaintiffs within a period of four weeks from the date of the order, failing which the Appellate Court will be at liberty to make appropriate order in the pending appeal. Liberty was also reserved for the plaintiffs to make appropriate application for enhancement of amount of compensation *inter alia* on the basis of the material which the defendant had suppressed even from the Appellate Court.

4. The plaintiffs filed application Exhibit-43 for vacating the interim order on the ground that the defendant did not pay costs of Rs.1 Lac and, therefore, the stay granted by the Appellate Court deserves to be vacated. By impugned order dated 19.4.2016, the learned District Judge allowed the application and vacated the stay. In the order, the learned District Judge noted that the defendant did not make it clear whether she is willing to pay costs or not. The period of four weeks given to the defendant to comply the order came to an end on 7.4.2016.

5. The defendant has thereafter taken out application Exhibit-49 on 30.4.2016 *inter alia* praying for

- “a) Execution and Operation of impugned Judgment and Decree may kindly be stayed in tendered of entire amount by Judgment Debtor in this Hon'ble Court according to Order passed by this Hon'ble Court as well as order passed by Hon'ble High Court.
- b) Appellant may permitted to deposit amount of Rs.3,10,000/- by way of Account Payee Cheque drawn on South Indian Bank, Nigdi Branch, bearing Cheque No.222661.”

6. By the impugned order dated 30.4.2016, the learned District Judge has rejected the application Exhibit-49.

7. In support of this Petition, Mr. Patil submitted that the defendant is a resident of Mumbai. She is not keeping well. The defendant also could not arrange the amount of costs and consequently could not comply the order passed by this Court on 10.3.2016. The defendant has also filed a Review Petition in this Court seeking review of order dated 10.3.2016. Learned District Judge without considering these aspects allowed the application on 19.4.2016 and vacated the stay. He further submitted that the defendant was not aware of the order dated 19.4.2016. After acquiring knowledge of passing of said order, the defendant immediately filed application dated 30.4.2016 at Exhibit-49 seeking stay of the execution of the eviction decree

and seeking permission to deposit Rs.3,10,000/- towards the arrears of compensation for the period commencing from September, 2014 to May, 2016 and inclusive of costs of Rs.1 Lac as directed by this Court. Mr. Patil submitted that as Review Petition is pending in this Court seeking review of the order dated 10.3.2016, the learned District Judge could not have vacated the stay on 19.4.2016. In any case the defendant was ready and willing to deposit Rs.3,10,000/- in the Court and, therefore, the learned District Judge should have allowed the application Exhibit-49. Her son is also suffering from various diseases. He further submitted that because of the circumstances beyond the control of the defendant, she could not deposit costs of Rs.1 Lac within the stipulated period and the defendant tenders unconditional apology for not obeying the orders passed by this Court and the District Court.

8. Mr. Patil invited my attention to the assertions made in Civil Application No.1168/2016 and submitted that after passing of the order dated 30.4.2016 below Exhibit-49, the plaintiffs filed application for issuance of possession warrant. Learned District Judge issued warrant of possession. On 4.5.2016, the matter

was mentioned before this Court for urgent circulation. This Court granted circulation and placed the matter for admission on 6.5.2016. Even private notices were sent to the plaintiffs intimating that the matter will be heard for admission on 6.5.2016. However, on 4.5.2016 at about 8:30 p.m., the plaintiffs took forcible possession of the suit premises with the help of police protection in the absence of the defendant in a very high handed manner which has caused heavy losses to her. Her articles are lying in the suit premises. He, therefore, submitted that Civil Application may be allowed and the plaintiffs may be directed to restore the possession of the suit premises.

9. On the other hand Mr. Kulkarni supported the impugned orders. He has invited my attention to order dated 10.3.2016 passed by this Court in Review Petition No.126/2015 as also the prayers made by the defendant in application Exhibit-49. He submitted that in the first place, the defendant did not deposit the costs of Rs.1 Lac within four weeks from 10.3.2016. Secondly, the defendant did not seek extension of time from this Court for depositing costs of Rs.1 Lac. Thirdly,

the learned District Judge vacated the stay on 19.4.2016 for non-compliance of this Court's order dated 10.3.2016. Fourthly, after the stay was vacated the plaintiffs have taken possession on 3.5.2016. He has also invited my attention to affidavit filed on behalf of the plaintiffs and submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

10. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The plaintiffs have instituted the suit against the defendant for her eviction from the suit premises. On 13.9.2013, the learned trial Judge decreed the suit under Section 16(1)(b) and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') and directed the defendant to deliver vacant possession of Shops No.7 and 8 as block Nos.7 and 8 situate at ground floor of C.T.S. No.4675 of Survey No.202/2A Mumbai-Pune Road, within the municipal limits of Pimpri Chinchwad Municipal Corporation (for short, 'suit premises'). Aggrieved by this decision, the defendant preferred appeal. Pending appeal, she took out application Exhibit-5 for stay of

the eviction decree. By order dated 19.8.2014, the learned District Judge allowed that application and granted stay subject to the defendant depositing Rs.10,000/- per month as and by way of compensation for use and occupation of the suit premises. Defendant filed application Exhibit-16 for review of that order. She also filed application Exhibit-18 for stay of the order below Exhibit-5 in Civil Appeal. By order dated 30.8.2014, learned District Judge dismissed the applications.

11. Aggrieved by these orders, the defendant instituted Writ Petition No.8149/2014 in this Court. After hearing both sides, by order dated 17.7.2015 this Court allowed the petition and instead of condition of depositing Rs.10,000/- per month, the defendant was directed to deposit Rs.7000/- per month. The plaintiffs filed Review Petition No.126/2015 in this Court. After hearing both sides, this Court allowed the Review Petition and recalled the order dated 17.7.2015 and dismissed Writ Petition No.8149/2014 by imposing costs of Rs.1 Lac payable by the defendant to the plaintiffs within four weeks from the date of the order. This Court also observed that the Appellate Court before whom the defendant's appeal is pending to ensure that such

costs are indeed paid by the defendant to the plaintiffs within four weeks from the date of the order failing which the appellate Court will be at liberty to make appropriate applications in the pending appeal. This Court also gave liberty to the plaintiffs to file appropriate applications before the District Court for enhancement of the amount of compensation.

12. As the defendant did not deposit the costs of Rs.1 Lac within four weeks from 10.3.2016, the plaintiffs took out application Exhibit-43 for vacating interim order. Learned District Judge allowed the application and vacated say. In the order, the learned District Judge observed that the defendant did not make it clear whether she is willing to pay the costs or not. The period of four weeks given to the defendant to comply the order come to an end on 7.4.2016.

13. The defendant thereafter filed application dated 30.4.2016 at Exhibit-49. I have already produced the prayers in the earlier part of the order. In paragraph-4, the defendant contended thus :

“4] Without prejudice to above contention Appellate submits that,

Appellate is requesting Hon'ble Court to deposit amount of fine Rs.1 lakh imposed by Hon'ble High Court and also the arrears of compensation as ordered by this Hon'ble Court at the rate of Rs.10,000/- month i.e. April, 2014 to May, 2016. Appellate submits that Appellant has already paid an amount of Rs.30,000/- and now wants to pay an amount from September, 2014 to May, 2016. The said amount of compensation comes to the tune of Rs.2,10,000/-. On behalf of Judgment Debtor cheque of Rs. 3,10,000/- is sought to be given in Hon'ble Court by way of compliance of Order passed by this Hon'ble Court and as well as order of Hon'ble High Court. The Appellant further undertakes to deposit and continue to deposit amount of compensation regularly, punctually and periodically. So also delay that has occurred in tendering said amount in Hon'ble Court may kindly be condoned."

14. Perusal of paragraph-4, extracted hereinabove, shows that the defendant prayed for condoning the delay in tendering the amount. By prayer clause (a), the defendant prayed for stay of the eviction decree, as she is willing to deposit the entire amount in the District Court as per the order passed by this Court as also by the High Court. By prayer clause (b), the defendant sought permission to deposit Rs.3,10,000/-. It is not in dispute that the defendant was given four weeks time from 10.3.2016 by this Court to pay costs of Rs.1 Lac to the plaintiffs.

The period of four weeks expired on 7.4.2016. It is not in dispute that the defendant did not pay the costs within the stipulated period. In that situation, the only course open to the defendant was to move this Court for extension of time to comply the order dated 10.3.2016. Admittedly the defendant did not adopt such course. As the defendant did not pay the costs within the stipulated period, the plaintiffs took out application Exhibit-43. By order dated 19.4.2016, the learned District Judge vacated the stay. I do not find that the learned District Judge committed any error in vacating the stay for non-compliance of this Court's order dated 10.3.2016. Instead of moving this Court for extension of time, the defendant filed application Exhibit-49 on 30.4.2016. In my opinion, the learned District Judge could not have enlarged the time stipulated by this Court in the order dated 10.3.2016. The prayer made by the defendant in paragraph-4 of the application Exhibit-49 for condoning the delay in paying the amount was wholly misconceived. Unless and until the time stipulated by this Court in the order dated 10.3.2016 is enlarged by this Court, the prayers made by the defendant in the application Exhibit-49 could not have been considered and consequently granted by the District Judge.

15. Mr. Patil submitted that because of the circumstances beyond the control of the defendant, she could not pay the costs within the stipulated time. He further submitted that the defendant has filed Review Petition in this Court seeking review of the order dated 10.3.2016. It is however material to note that the defendant has not obtained stay to the eviction decree in the Review Petition so filed. In other words, there was no impediment against the plaintiffs from taking possession of the suit premises after the stay granted by District Court was vacated. In view thereof, I do not find that the learned District Judge committed any error while rejecting the application Exhibit-49.

16. Mr. Kulkarni has invited my attention to the order dated 10.3.2016 passed by this Court in Review Petition No.126/2015. While allowing the Review Petition, this Court observed in paragraph-16 that the defendant has resorted to abuse of process and while allowing the Review Petition and dismissing the Writ Petition, imposed costs of Rs.1 Lac on the defendant.

17. Mr. Patil has submitted that despite giving advance notice to the plaintiffs, they have taken forcible possession of the

suit premises with the help of police protection on 4.5.2016. The plaintiffs have taken possession in a very high handed manner and, therefore, same should be restored to the defendant. He submitted that the defendant is not keeping well. Her son is also suffering from various diseases and therefore on humanitarian ground, the suit premises deserves to be restored to the defendant.

18. I do not find any merit in any of the submissions made by Mr. Patil. If the prayer made in Civil Application is allowed that will nullify the order dated 19.4.2016 below Exhibit-43 vacating the stay and also setting aside the order dated 30.4.2016 below Exhibit-49. In view of the observations made in the order dated 10.3.2016 passed by this Court in Review Petition No.126/2015, this is not a fit case for invocation of powers under Article 227 of the Constitution of India. If this Court assists the defendant it will be a case of misplaced sympathy. Hence, Writ Petition fails and the same is dismissed. Civil Application is also dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(R. G. KETKAR, J.)