

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

WRIT PETITION NO. 5908 OF 2015

Ketan Nanji Shah alias Gada

..Petitioner.

Vs

Smt. Hansaben Nanji Shah @
Gada & Ors

.. Respondents

Ms. Sapana Rachure i/b T.N.Tripathi & Co, Advocates for
Petitioner.

Mr. P.M.Shah a/w Mr. M.K. Tanna , Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 29/06/2016

PC:

1. Heard Ms. Sapana Rachure, learned counsel for the petitioner and Mr. P.M.Shah, learned counsel for respondent no.1 at length. At the request of Ms. Rachure, leave to delete respondents no.2 to 5 is granted as respondent no.1 is the only contesting respondent. Amendment shall be carried out forthwith.

2. Rule. Mr. Shah waives service for respondent no.1. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up finally.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'original defendant

no.1', has challenged the Judgment and order dated 30.3.2015 passed by the Appellate Bench of the Small Causes Court at Bandra, Mumbai in Revision Application No.56 of 2014. By that order, the Appellate Court allowed the Revision Application preferred by defendant no.1 and quashed and set aside the Judgment and order dated 7.3.2014 passed by the learned Judge, presiding over Court Room no.36 of the Small Causes Court at Mumbai below Exh.25 in R.A.E. & R. Suit No.16/19 of 2010 and modified the same as under :-

- 1) Revision Application is hereby allowed.
- 2) The order passed by the trial Court on 7.3.2014 below Exhibit 25 in R.A.E.& R. Suit No. 16/19 of 2010 is hereby set aside and modified as under:-
 - (i) Defendant no.1 shall deposit arrears of rent of the suit premises since July, 2004 to March, 2015 at the rate of Rs.2000/- per month and go on regularly depositing the same for the further period since April, 2015 till the final disposal of the suit at the same rate.
 - (ii) The plaintiff is entitled to the society maintenance charges since July, 2007 to March, 2015 and also for the further period till the disposal of the suit.
 - (iii) Defendant no.1 shall deposit the arrears of society maintenance charges since July 2007 to March, 2015 within one month from the date of this order and further go on depositing regularly as per society bills.
 - (iv) Defendant no.1 shall deposit arrears of rent in respect of the suit premises since July, 2004 to March, 2015 within one month from the date of this order and further go on depositing regularly on or before 15th day of each month.
 - (v) The plaintiff is entitled to withdraw an amount of

Rs.1000/- (Rs. One thousand only) per month out of the total rent amount deposited in the court by defendant no.1. Plaintiff is also entitled to withdraw the amount of society charges deposited by the defendant no.1.

(vi) Both the parties are entitled for an adjustment of amount deposited in the court if any in future.

(3) In the circumstances, no order as to costs.”

4. In support of this Petition Ms Rachure submitted that the plaintiff filed application Exh.25, inter alia, praying for direction to defendant no.1 to deposit arrears of rent in respect of shop premises more particularly described in the plaint from July 2004 to June 2013 at the rate of Rs.2000/- per month and to go on depositing the same from July 2013 till disposal of the suit at the rate of Rs.2000/- per month; for direction to defendant no.1 to deposit arrears of society maintenance charges. She submitted that the suit was instituted in the year 2010. By order dated 7.3.2014, the learned trial Judge partly allowed the application.

Clauses 2 to 4 of operative part of the order read thus:

“2. Defendant no.1 is ordered and directed to deposit arrears of rent in respect of suit premises for three years before date of filing of suit and from the date of filing of the suit onwards at the rate of Rs.2000/- per month.

3. The prayer of plaintiff in respect of society maintenance charges is rejected.

4. The plaintiff is entitled to withdraw 1/6th share out of total rent amount deposited by defendant no.1.”

5. Ms. Rachure submitted that by clause 2, the learned trial

Judge directed defendant no.1 to deposit arrears of rent for three years before the date of filing of suit and from the date of filing of suit onwards at the rate of Rs.2000/- per month. The prayer of the plaintiff in respect of society maintenance charges was rejected. The plaintiff was allowed to withdraw 1/6th share out of total rent amount deposited by defendant no.1.

6. As against this, the Appellate Court directed defendant no.1 to deposit arrears of rent of the suit premises since July 2004 to Mar. 2015 at the rate of Rs. 2000/- per month and to go on regularly depositing the same for further period from April 2015 till the final disposal of the suit. The Appellate Court further held that the plaintiff is entitled to society maintenance charges from July 2007 to March 2015 and also for further period till disposal of the suit. The Appellate Court also permitted the plaintiff to withdraw amount of Rs.1000/- per month out of the total rent amount deposited by defendant no.1 in the Court and also withdraw the amount of society charges deposited by defendant no.1.

7. Ms. Rachure submitted that the Appellate Court was not justified in modifying clause 2 of the operative part of the trial Court's order. In other words, she submitted that the Appellate Court could not have directed defendant no.1 to deposit arrears of rent for a period beyond three years before filing of the suit.

She further submitted that the Appellate Court was also not justified in permitting the plaintiff to withdraw the amount of Rs.1000/- per month out of the total rent amount deposited by the defendant as the plaintiff has 1/6th share in the suit premises.

8. As far as the society maintenance charges are concerned, upon taking instructions from the petitioner who is present in the Court, she states that the petitioner will directly pay the society maintenance charges to the society. She states that within four weeks from today, the arrears of society maintenance charges will be cleared by paying the same to the society and the petitioner will go on regularly paying the society maintenance charges to the society as per the society Bills under intimation in writing to the plaintiff's Advocate. Statements made by Ms. Rachure on instructions are recorded.

9. On the other hand, Mr. Shah supported the impugned order. He submitted that the plaintiff is mother of defendant no.1. Defendant no.1 is in possession of the suit premises since 2004. As defendant no.1 is in possession of the suit premises since 2004, the Appellate Court was justified in directing defendant no.1 to deposit arrears of rent since July 2004. In any case, he submitted that the question whether the plaintiff is entitled to claim arrears of rent from July 2004, may be kept open for agitating the same at the time of final disposal of the suit. He

further submits that the plaintiff may be permitted to withdraw an amount of Rs.1000/- per month as per clause 2(v) of operative part of the Appellate Court order.

10. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, by clause 2 of the operative part of the order, the learned trial Judge directed the defendant no.1 to deposit arrears of rent in respect of the suit premises for three years before the date of filing of the suit. Ms Rachure has not assailed correctness of this direction. In view thereof and without prejudice to the rights and contentions of the plaintiff to agitate this issue at the time of final hearing of the suit, clause 2(i) and (iv) of the Appellate Court order are modified as under:

11. Defendant no.1 shall deposit arrears of rent of the suit premises for three years before the date of filing of the suit at the rate of Rs.2000/- per month and shall go on depositing the same for further period till disposal of the suit at the rate of Rs.2000/- per month in the trial Court. Defendant no.1 shall deposit arrears of rent within four weeks from today subject to adjustment, if any, in the trial Court. Deposits shall be made under intimation in writing to the plaintiff's Advocate.

12. Plaintiff is permitted to withdraw amount of Rs.1000/- per

month out of total amount deposited in the court by defendant no.1 and the same shall be without prejudice to the rights and contentions of the parties.

13. Mr. Shah submits that the plaintiff is 75 years old. In view thereof, liberty is reserved to the parties to apply for final disposal of the suit in a time bound manner. If such application is made, the learned trial Judge will have due regard to the fact that the plaintiff is a senior citizen and will pass appropriate order thereon.

14. Rule is partly made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)