

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 8179 OF 2016

Prakash Aba Mathkar

...Petitioner

Versus

Murlidhar Yashwant Rane And Anr.

...Respondents

....

Ms. Prabha Badadare, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 03rd August, 2016

P.C.

1. Not on board. At the request of Ms.Badadare, taken up for admission. Heard Ms.Prabha Badadare, learned Counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 9.6.2016 passed by the Appellate Bench of the Small Causes Court at Bombay in Revision Application No.16/2016 and Revision Application No.19/2016. Revision Application No.16/2016 was preferred by defendant No.2 challenging the judgment and order dated 25.11.2015 passed by the learned Judge, presiding over Court Room No.20 of Small Causes Court at Mumbai below Exhibit-16 in Misc.Notice No.208/2006 in R.A.E. Suit No.1914/2002. By that order, the learned trial Judge

rejected the application taken out by defendant No.2 seeking recall of application Exhibit-8 in view of order dated 15.1.2013 passed by this Court. Appellate Court rejected Revision Application No.16/2016.

3. Revision Application No.19/2016 was filed challenging the judgment and order dated 25.11.2015 passed by the learned Judge, presiding over Court Room No.20 of Small Causes Court at Mumbai below Exhibit-17 in Misc.Notice No.208/2006 in R.A.E. Suit No.1914/2002. By that order, the learned trial Judge rejected the application made by defendant No.2 seeking issuance of notice to the plaintiff as to why defendant No.2 be not permitted to record additional evidence on documents relied upon by him in the application. Aggrieved by that decision, defendant No.2 preferred Revision Application No.19/2016. By order dated 9.6.2016, Appellate Court rejected said Revision Application.

4. Ms.Badadare submitted that Civil Revision Application No.1023/2012 was instituted by one of the tenants of the first respondent challenging the decree of eviction. In that case, the eviction was sought on the ground of arrears of rent as per Section 15 of the Act. The decision rendered in that Civil

Revision Application will govern the fate of this Petition. She states that the petitioner is present in the Court. She has tendered photocopy of Aadhaar Card of the petitioner, which is taken on record and marked 'X' for identification. Upon taking instructions from him, she states that the petitioner is not pressing the petition if time to vacate upto 31.12.2016 is given to him. She assures that within two weeks from today the petitioner and all adult family members residing in the suit premises will give usual undertaking incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of rent, if any to the respondent within two weeks from today; and
- (v) that the petitioner will hand over vacant and peaceful possession of the suit premises to respondent No.1 herein on or before 31.12.2016.

5. In view thereof, the Petition is disposed of as not pressed in the following terms:

- (1) The petitioner accepts the correctness of the impugned orders and that his tenancy is terminated.

(2) Eviction decree shall not be executed on or before 3.12.2016 subject to the petitioner and all adult family members residing in the suit premises giving undertaking incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of rent, if any to the respondent within two weeks from today; and
- (vi) that the petitioner will hand over vacant and peaceful possession of the suit premises to respondent No.1 herein on or before 31.12.2016.

(3) Petition is disposed of in aforesaid terms. Order accordingly.

(4) Parties concerned to act upon the authenticated copy of this order.

6. List the Writ Petition for reporting compliance after three weeks.

(R. G. KETKAR, J.)