

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9217 OF 2016

Shri. Narayan Ganpat Urankar ...Petitioner
Versus
M/s. Pyramid Corporation ...Respondent
....
Ms. Madhavi Tavanandi, Advocate for the Petitioner.
....

CORAM : R. G. KETKAR, J.

DATE : 04th August, 2016

P.C.

1. Not on board. At the request of Ms.Tavanandi, taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 14.7.2016 passed by the learned Judge, presiding over Court Room No.17 of Small Causes Court at Mumbai below Exhibit-1 in Execution Application No.306/2016. By that order, the learned trial Judge issued warrant of possession under Order 21 Rule 35 of Code of Civil Procedure, 1908 (for short, 'C.P.C.')

3. The respondent had instituted R.A.E. & R. Suit No.1398/2076 of 2006 against the petitioner for recovery of possession of the suit premises on various grounds, such as, the arrears of rent, carrying out additions and alterations of permanent nature, change of user, un-lawful sub-letting, bonafide requirement. The learned trial Judge decreed the suit only on the ground of arrears of rent on 31.7.2012. Aggrieved by this decision, the defendant preferred appeal. During pendency of the appeal, the defendant took out application Exhibit-7 for stay of the eviction decree. By order dated 9.4.2015, Appellate Court partly allowed the application and stayed the execution and operation of the decree dated 31.7.2012 to the extent of possession subject to the petitioner depositing compensation @ Rs.3000/- per month from 31.7.2012 upto April, 2015 within one month from the date of the order and @ Rs.3000/- per month from May, 2015 onwards till disposal of the appeal on or before 10th day of each succeeding month in the Court.

4. As the petitioner did not comply the condition of deposit of arrears @ Rs.3000/- and further deposit of compensation from May, 2015 onwards, the respondent took

out application for vacating the interim order and for issuing warrant of possession. By the impugned order, the learned trial Judge has issued warrant of possession on the ground that the stay granted by the Appellate Court stood vacated automatically.

5. Ms.Tavanandi states that the petitioner is present in Court. She has tendered a photo copy of identity card issued by Tahsildar, Mumbai to the petitioner as a Senior Citizen, which is taken on record and marked "X" for identification. Upon taking instructions from him, she states that the petitioner is in possession and nobody else is in possession. The petitioner has neither created third party interest nor parted with the possession. The petitioner will hereafter neither create third party interest nor part with the possession. Statements made, on instructions, are recorded. She further states that the petitioner will deposit the arrears @ Rs.3000/- per month from 31.7.2012 to 31.8.2016 in the Small Causes Court at Mumbai within one week from today. She further states that during this period, the petitioner will also took out appropriate proceedings before the Executing Court for recalling the order dated 14.7.2016.

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

- [i] The petitioner shall deposit the amount of compensation @ Rs.3000/- per month from 31.7.2012 to 31.8.2016 in the Small Causes Court, Mumbai within one week from today. This shall be without prejudice to the rights of the respondent.
- [ii] The petitioner will take out appropriate proceedings before the Executing Court for review of the impugned order dated 14.7.2016 within one week from today;
- [iii] Without prejudice to the rights and contentions of the parties for a period of two weeks from today, subject to the petitioner neither creating third party interest nor parting with the possession of the suit premises, the decree of eviction shall not be executed. It is made clear that in case the petitioner does not deposit the arrears of compensation and/or does not take out appropriate proceedings for recalling the impugned order within one week from today, the interim order shall stand vacated without further reference to the Court. In case the petitioner deposits the arrears of compensation and

also takes out appropriate proceedings for recalling the impugned order within one week from today, the Executing Court will decide said application on its own merits uninfluenced by this order. All contentions of the parties on merits are expressly kept open.

[iv] Petition is disposed of in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)