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

WRIT PETITION NO.11521 OF 2016

M/s. Rubberwala Developers Pvt. Ltd.

.. Petitioner

Vs

Shantabai Dattatraya Sawant & Ors.

.. Respondents

Ms. Kavita Shah for the Petitioner.

Mr. R. M. Haridas for Respondent Nos. 2 to 4.

***CORAM : N.M.Jamdar, J.
Thursday, 17 November 2016.***

ORAL ORDER:

The Petitioner has challenged the order passed by the appellate bench of the Small Causes Court, Bombay dated 21st June 2016. The petitioner who is a developer and the defendant in Suit R.A.D. Suit No. 208/2012 has been directed by the impugned order to pay an amount of Rs.54,000/- to Respondent Nos. 2, 3 and 4 towards transit rent from 54,000/- per year from 10th April 2016. The Petitioner is also directed to pay arrears at the same rate from July 2011.

2. As regard the amount of Rs.54,000/- to be paid per year is concerned the learned counsel for the Petitioner submitted the direction to pay the amount till disposal of the suit is not warranted as the liability of the Petitioner will only continue till the construction is completed and the flat is ready to be handedover. The submission is

correct. The Petitioner cannot be directed to pay the amount even though Petitioner is ready to handover the possession. After the construction is completed and flat is ready to handover it will be open to the petitioner to apply to the Court for cancellation of the holding the Petitioner to pay the transit rent.

3. The next submission advanced by the learned counsel for the Petitioner is that the Petitioner cannot be directed to pay the arrears from July 2011 as the possession has been handed over only in this year. Considering the quantum of the amount of arrears and the scope of jurisdiction of this Court under Article 227, I am not inclined to enter into this inquiry as the issue can be kept open at the time of adjudication of the suit. The apprehension expressed by the learned counsel for the Petitioner that the plaintiff also will seek similar amount, is unfounded. The impugned order is passed in April 2016. It is informed that this order is not been challenged by the original plaintiff, neither original plaintiff has sought any transit rent. The liability to the Petitioner under the impugned order is only towards respondent Nos. 2, 3 and 4, as there is no order passed in favour of the Plaintiff.

4. In the circumstances the Petitioner will deposit the amount the arrears as directed in the Small Causes Court, within four weeks and it will be open to the Respondent Nos. 2 to 4 to withdraw the same by making a formal application. Since the Petitioner will be

liable to pay the transit rent only *qua* the flat the Petitioner will not be directed to pay transit rent to both the plaintiff as well as Respondent Nos. 2, 3 and 4 and the *inter se* entitlement of the plaintiff and Respondent Nos. 2, 3 and 4 will be decided at the time of disposal of the suit and the learned Small Causes Court Judge, at the time of disposal of the suit will pass necessary order in that regard. In view of this position no further order are required to be passed in this petition. Writ Petition is disposed of.

(N.M.Jamdar, J.)