

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.25266 OF 2016

Shanmuga Konar Subbiah @ S. Subbiah ... Petitioner
Vs.
M/s. Mercury Paints and Varnishes Limited ... Respondent

Mr. A. K. Patil i/b. Mr. Rajeev Matkar for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 17, 2016

P.C. :

Heard Mr. Patil, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the judgment and order dated 19.12.2013 passed by the learned Judge presiding over Court Room No.9 of the Court of Small Causes at Bombay below exhibit-13 in L.E.Suit No.54/65 of 2013 as also the judgment and order dated 11.08.2016 passed by the Appellate Bench of the Small Causes Court in (iii) Revision Application No.355 of 2015. By these orders, the Courts below allowed the application made by the respondent, hereinafter referred to as 'plaintiff', under Order 15-A of the Code of Civil Procedure, 1908 seeking direction against defendant to deposit arrears of compensation. The Courts below directed the defendant to pay arrears of licence fees @ Rs.5,000/- from the date of filing of the Suit till December 2013 and to go on depositing the amount of licence fees for succeeding months on or before 10th day of each month till the decision of the Suit. The amount of licence fees deposited by the defendant is ordered to be retained in the Court till the decision of the Suit or till the decision about the status of the defendant in the proceedings pending in the High Court in C.R.A. No.292 of 2012.

3. In support of this Petition, Mr. Patil submitted that defendant had instituted R.A.D. Suit No.289 of 2001 against the landlord Shree Vajreshwari Wadi Private Trust (for short 'Trust') (defendant No.1) and the present plaintiff (defendant No.2) for declaration of tenancy rights in respect of flat No.13, first floor, Matruchhaya, 304, Veer Savarkar Marg, Mumbai 400 028 (for short 'suit premises') The Suit was decreed on 19.12.2008. Aggrieved by that decision, plaintiff herein preferred appeal which was allowed on 13.01.2012. Aggrieved by this decision, defendant instituted C.R.A.No.292 of 2012 in this Court, which is admitted. He submitted that the defendant No.1, landlord have accepted the decree passed in favour of the defendant herein. He submitted that plaintiff herein also claims to be a tenant in respect of the suit premises and that defendant is a gratuitous licensee being in the employment of the plaintiff. As the Trust being a landlord accepted the decree, the Courts below were not justified in allowing the application made by the plaintiff.

4. Mr. Patil further submitted that defendant has retired from the employment of the plaintiff and is 83 years old. The area of the suit premises is 300 sq.ft. The Compensation fixed by the Courts below is exorbitant and it will not be possible for the defendant to comply the impugned order. He, therefore submitted that the Petition requires consideration and the impugned orders deserve to be set aside.

5. I have considered the submissions advanced by Mr. Patil. I have also perused the material on record. As noted earlier, defendant has instituted R.A.D.Suit against the Trust and the present plaintiff. The Suit was decreed on 19.12.2008. Aggrieved by that decision plaintiff herein preferred appeal, which was allowed on 13.01.2012. Perusal of the appellate Court judgment shows that Trust did not file written

statement in the Suit and the Suit proceeded ex-parte against the Trust. Suit was resisted by the plaintiff herein by filing written statement. Plaintiff denied that the defendant is residing in the suit premises since September 1970 as a tenant. Plaintiff further contended that they acquired the premises in the year 1963. Defendant joined service of the plaintiff as a driver in September 1965. Plaintiff contended that the rent receipts stand in the name of plaintiff No.2. It was contended that defendant was in employment of the plaintiff and he was permitted to use the suit premises as an employee. In other words, defendant is a gratuitous licensee of the plaintiff. Defendant was going to retire in March 2001. By letter dated 07.11.2000, he was not called upon to give back the possession. Plaintiff, therefore, claimed that defendant herein is not entitled to any relief. It is no doubt true that against the order of the appellate Court, C.R.A. is admitted and is pending in this Court.

6. Courts below, while allowing the application, have noted that defendant is occupying the suit premises without making any payment towards the licence fees or rent. The suit premises is a flat having carpet area of 300 sq.ft. situate at Veer Savarkar Marg, Mumbai 400 028. The area where the suit premises is situate is in prime location and is in building and not in a chawl. The learned trial Judge accordingly directed defendant to go on depositing licence fees @ Rs.5,000/- per month. As far as the appellate Court is concerned, in paragraph 12, the appellate Court observed that while passing the impugned order, the learned trial Judge took into consideration all the attending circumstances and directed the defendant to pay the arrears of licence fees @ Rs.5,000/- per month.

7. For the reasons recorded by the learned trial Judge in paragraph 7, which are affirmed by the appellate Court, I do not find that any case is

made out for interfering with the impugned orders. Hence, Petition fails and the same is dismissed.

8. At this stage, Mr. Patil applies for extension of time of 6 weeks for depositing the arrears of licence fees from the date of filing of the Suit i.e. 16.01.2013 to 31.10.2016. Mr. Patil assures that defendant will go on depositing the licence fees for November 2016 and succeeding months on or before 10th day of the succeeding month/s.

9. In view thereof, time to deposit arrears of licence fees in the trial Court for the period from 16.01.2013 to 31.10.2016 is extended by 6 weeks from today. The amount so deposited shall be invested in any Nationalized Bank for a period of three years during the pendency of the Suit and the same shall be renewed from time to time. Order accordingly.

(R. G. KETKAR, J.)

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