

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11462 OF 2015**

Bank of Baroda

..Petitioner.

Vs

Taralaxmi Kantilal Shah

.. Respondent

Mr. V. Y. Sanglikar, Advocate for Petitioner.

Mr. R. D. Soni a/w Mr. Gaurav A. Sawant, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 05/10/2016

PC:

1. Heard Mr.V.Y.Sanglikar, learned counsel for the petitioner and Mr.R.D.Soni, learned counsel for the respondent at length. Rule. Mr.Soni waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged the Judgment and order dated dated 14.9.2015 passed by the learned Judge presiding over Court Room No.19 of the Small Causes Court at Mumbai below Exhibit-19 in T.E.Suit No.171/209 of 2012. By that order, the learned trial Judge rejected application Exhibit-19 made by defendant praying for the following reliefs:-

(a) that the plaintiff's prayer (a) in the above suit be marked satisfied w.e.f. 31.8.2015;

(b) that the plaintiff be ordered and directed to accept the keys of the suit premises;

(c) that in the alternative to prayer (b) above, the defendant be permitted to deposit the keys of the suit premises in this Hon'ble Court;

(d) for costs of this application;"

3. In support of this petition, Mr.Sanglikar has invited my attention to prayers made by the respondent in that suit which are as under:

(a) that the defendants be ordered and decreed to hand over possession of the suit premises to the plaintiff at 213, Khetwadi Main Road, Mumbai-400004.

(b) that the Hon'ble Court be pleased to order that the plaintiff is entitled to recover mesne profits from the defendants from 27.6.2011 or from such other date as may be decided by the Hon'ble Court."

He invited my attention to clause (E) of the lease deed which is not registered. Clause (E) of that lease reads thus :

"(E) The Lessee shall be entitled to determine the lease during the continuance of its period by giving one month notice to the lessor and on the expiry of the period of such notice, the lessor shall take possession of the demised premises and the lessee shall not be liable for any future rent."

Mr. Soni has invited my attention to Consent Terms signed by the parties and in particular clause 5 thereof which reads thus:

"5. The monthly rent at Rs.50/- (Rupees fifty) per square feet is excluding all taxes, cess etc. The defendant agrees and undertakes to pay to the concerned authorities all the municipal taxes, cess and other taxes which may be payable in respect of the suit premises and/or any increase thereon."

Mr. Sanglikar submitted that by prayer (a) of application Exhibit -19, the defendant prayed for passing decree in terms of prayer clause (a) of the suit as being satisfied. Mr. Soni submits that the suit may be decreed in terms of prayer clause (a), thereby, keeping it pending in respect of prayer clause (b) for mesne profits and other reliefs. Mr. Sanglikar assures that the defendant will hand over vacant and peaceful possession of the suit premises to the plaintiff on 13.10.2016 at 11 am. In my opinion, handing over possession of the suit premises by the defendant to the plaintiff should be done in the presence of officer not below the rank of Section Officer to be deputed by the Small Causes Court

4. As far as rest of the prayers in the suit are concerned, the suit will proceed and the suit stands partly decreed in terms of prayer clause (a). All contentions of the parties in that regard are expressly kept open.

5. Application-Exhibit-19 stands allowed accordingly. Impugned order stands substituted by this order. Rule is made absolute in the above terms.

6. All parties including Small Causes Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)