

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4299 OF 2015

HAN Motors (India) Pvt. Ltd.

.. Petitioner

Versus

Mrs. Renu Murlidhar Tilwani

.. Respondent

Mr. Anand Talreja, for the Petitioner.

Mr. P. S. Dani, Senior Advocate i/by Mr. P. P. Kulkarni, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 9th FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 02.08.2014 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order the Revision Application filed by the Petitioner being No.108 of 2014 came to be partly allowed and the directions as contained in the operative part of the said order came to be issued. The said directions would be referred to in the latter part of this order. The Petitioner herein is the original Defendant in LE & C Suit No.73/95 of 2009 filed by the Respondent herein for eviction, compensation and arrears of licence fees. In the said suit, the Plaintiff filed an application invoking Section 15A for a direction that the Defendant be directed to deposit the arrears of licence fees in the Court. After the

application Exh.13 was filed and was pending consideration of the Trial Court, the Defendant filed application Exh.46 for being permitted to lead evidence to counter the Plaintiff's case of deposit of the amount which was sought by the Plaintiff vide application Exh.13. The Trial Court considered the said application Exh.46 and having regard to the past conduct of the Defendant as also having regard to the fact that the application Exh.13 was an interlocutory application and therefore evidence cannot be permitted to be led, rejected the said application Exh.46.

2. The aggrieved Defendant carried the matter by way of a Revision being Revision Application No.108 of 2014. As indicated above, the Revisionary Court i.e. Appellate Bench of the Small Causes Court exercising powers of Revision has partly allowed the Revision Application and has issued directions as under :-

“Revision Petition is partly allowed.

Petitioner is directed to deposit interim compensation at contractual rate till 31.08.2010 as agreed before us.

Defendant is given liberty to lead evidence before trial court on this point only at the stage of trial of the suit and nor prior to that.

Trial court is directed to decide application Exh.13 along with main suit after giving opportunity to both the parties to lead evidence.”

3. The Appellate Bench of the Small Causes Court has adverted to the case of the Defendant that it would not in a position to use the premises on account of the reasons mentioned in the said application Exh.46 and therefore, questioned the deposit sought on the said basis. The Appellate Bench was of the view that the objection could be decided at the time of the trial of the suit, but would not be an impediment for the tenant/licensee not to deposit the amount. The Appellate Bench of the Small Causes Court accordingly directed the Defendant to deposit the interim compensation at the contractual rate till 31.08.2010 as agreed it. The Appellate Bench as recorded in paragraph 9 that the Defendant has agreed to the suggestion of the Court. The Appellate Bench on the said basis has granted permission to the Defendant to lead evidence before the Trial Court which would be only at the trial of the suit and also directed that the application Exh.13 would be decided along with the suit. In my view, by the order passed by the Revisionary Court i.e. Appellate Bench of the Small Causes Court, the interest of the Defendant is adequately protected. In any event, this Court does not deem it fit to exercise its writ jurisdiction having regard to the nature of the order passed by the Revisionary Court i.e. Appellate Bench of the Small Causes Court. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]