

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11740 OF 2015

M/s. Ish Homes Private Limited

.. Petitioner

Versus

D. N. Waingankar

.. Respondent

Mr. Javed A. Khan, for the Petitioner.

Mr. Rajeev S. Matkar, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 5th FEBRUARY 2016

PC.

1. The order dated 31.07.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, rejecting the Revision Application filed by the Petitioner herein is taken exception to by way of the above Petition. By the said Revision Application, the Petitioner was challenging the order dated 20.02.2014 passed by the Trial Court i.e. the Learned Judge of the Small Causes Court, by which order the application Exh.10 filed by the Respondent was partly allowed and the following directions as contained in the operative part of the said order came to be issued.

“1) Application is partly allowed.

2) Defendant is allowed to deposit arrears of rent along with 15% interest (as claimed in the demand notice and plaint of this suit) and costs of the suit, as decided by the office of the Court within one month.

3) Defendant is further allowed to deposit the rent from February, 2013 to February 2014 @ Rs.200/- per month within one month.

4) Defendant is further allowed to pay the rent of succeeding months @ Rs.200/- per month on or before 10th day of each succeeding month till disposal of the suit.

5) The Plaintiffs are allowed to withdraw the rent as @ when deposited by the Defendant.”

2. The said order was challenged on the ground that the course of action adopted by the Trial Court was not in consonance with the mandate of Section 15(3) of the Maharashtra Rent Control Act, 1999. The Revision Application filed by the Petitioner has been rejected on the ground of its maintainability as according to the Appellate Bench of the Small Causes Court exercising the Revisionary powers, in passing of the impugned order dated 20.02.2014, no substantive rights of the Petitioner have been affected as the order only directs the deposit of the amount and the prayer in so far as the fixation of standard rent is concerned, has not been entertained.

2. In so far as the Trial Court is concerned, the Trial Court has distinguished the scheme as contained in the Bombay Rent Act, 1947 as distinguished from the scheme as contained in Section 15(3) of the present Maharashtra Rent Control Act, 1999, and having regard to the present scheme, the Trial Court has observed that the present application

is referable to Section 15(3) of the Maharashtra Rent Control Act.

3. It was the submission of the Learned Counsel appearing on behalf of the Petitioner that the Trial Court has erred in permitting the Respondent herein i.e. original Defendant from depositing the costs of the suit as the application did not contain any such prayer for depositing the costs of the suit. In my view, the said contention cannot be accepted, the mandate of Section 15(3) is very clear, that no decree of eviction can be passed in the eventualities mentioned in the said Section, one of which is that the tenant pay the costs of the suit as directed by the Court. Hence, the direction is required to be issued by the Court and merely because in the application under Section 15(3) such a prayer was not made would not go against the tenant. The occasion would arise to urge the ground based on Section 15(3), if there is non-compliance of the directions which are issued on an application filed under the said provision. However, the same would only be at the trial of the suit. In that view of the matter, no fault can be found with the order passed by the Trial Court as is confirmed by the Appellate Bench of the Small Causes Court albeit on a different ground. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]