

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4818 OF 2015

Maratha Vidya Prasarak Samaj Trust,
Registration No.e-344(N)
Sakkardara Chowk, Nagpur,
Represented by Late Bhausahab Survey
Vidyalaya, Senior Bhonsala Place,
Raghujinagar, Nagpur
Thr. Diliprao M. Chauhan,
Aged about 51 years, Authorised person
for Maratha Vidya Prasarak Samaj Trust,

... Petitioner

vs-

1. Dilip Narayan Shirke
Aged about 60 years,
R/o Coal Estate WCL,
Civil Lines, Nagpur
2. Uday s/o Narayan Shirke
Aged about 49 years,
3. Ranjit s/o Narayan Shirke,
Aged about 47 years,
Nos.2 and 3 are R/o Bhonsale Wada,
Sakkardara, Nagpur.

... Respondents.

Shri Anand Parchure, Advocate for petitioner.
Shri M. B. Naidu, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.
DATE : August 04, 2016

Oral Judgment :

The challenge in the present writ petition is to the order dated
31/03/2012 passed by the trial Court on the application moved by the

respondents-original plaintiffs under provisions of Order XV-A of the Code of Civil Procedure, 1908. By the said order, the petitioner has been directed to deposit rent at the rate of Rs.19204/- per month during pendency of the suit.

2. The respondents are the original plaintiffs who have filed suit for ejectment and possession of the premises in occupation of the petitioner-Trust. During pendency of this suit, the respondents moved an application below Exhibit-83 seeking directions to the defendants in the suit to deposit rent @ Rs.19204/- per month along with arrears of rent. This application was opposed by the petitioner on the ground that the petitioner had paid municipal taxes amounting to Rs.806568/-. The claim towards arrears of rent was denied. By the impugned order, the trial Court directed the petitioner to deposit the entire arrears of rent within a period of 15 days and also deposit Rs.19204/- per month towards rent from the date of the application.

3. Shri A. Parchure, the learned counsel for the petitioner submitted that the trial Court did not take into consideration various amounts already paid by the petitioner towards the municipal taxes. He submitted that in the reply filed by the petitioner details of payments made by it were given. He further submitted that by filing affidavit on record in the present writ

petition, the actual payments made by the petitioner have been brought on record. According to him, the liability to pay municipal taxes was on the respondents and not on the petitioner. He therefore submitted that the trial Court ought to have deducted the amount of municipal taxes already paid by the petitioner while passing the impugned order.

4. Shri M. B. Naidu, the learned counsel for the respondents opposed the aforesaid submissions. He submitted that the writ petition itself was not maintainable as the same was not preferred by all the trustees of the Trust. He referred to the judgment of learned Single Judge in *AIR 1982 Bombay 487 Shrikishna Annaji Sonatake v. Ramnarayan Pannalal Rath and ors.* in that regard. He then submitted that the liability to pay the municipal taxes was on the petitioner and not on the respondents. He referred to the document at page 87 of the record which was a document submitted by the Head Master of the school to indicate that it was the liability of the petitioner to pay the municipal taxes. In fact reimbursement had been sought by the petitioner with regard to the municipal taxes. He then submitted that after final adjudication, any excess amounts paid by the petitioner would be adjusted as per the decree that would be passed in the suit. He therefore submitted that there was no case whatsoever made out to interfere in writ jurisdiction.

5. The learned counsel for the parties have been heard at length. I have given due consideration to their respective submissions. The impugned order arises out of a direction issued by the trial Court under provisions of Order XV-A of the Code. The same directs the petitioner to pay rent at the rate of Rs.19204/- per month apart from clearing arrears of rent. This amount of Rs.19204/- has been directed by taking into consideration the document dated 13/02/2001 which comprises of terms agreed by the parties. Hence the direction to that effect of paying the agreed amount of rent @ Rs.19204/- per month appears to be reasonable not warranting interference.

6. There is a dispute between the parties as regards the liability to pay the municipal taxes. According to the petitioner, the same are to be paid by the respondents while the respondents dispute the said liability. This fact would require adjudication and consideration of the evidence on record. No finding in that regard can be given at this stage without recording evidence. Though the learned counsel referred to various documents on record including a copy of Will dated 29/07/1998 as well as documents submitted on behalf of the Head Master of the School, at this stage when the suit is pending, I am not inclined to go into said controversy. When the claim in the suit is finally adjudicated, the liability of either party to pay the municipal taxes can be determined. Hence at this stage the direction to pay amount @ Rs.19204/- per month does not deserve to be interfered with.

Similarly, the contention that the writ petition having been filed by only the Trust and therefore does not deserve to be entertained, cannot be accepted. The decision relied upon by the learned counsel for the respondent pertains to necessary parties in a suit. In the present case, such trustees have been made party to the proceedings pending in the trial Court. Hence the writ petition is not liable to be dismissed on account of failure to implead all the trustees.

7. By holding that the amounts paid in excess of the amount of Rs.19204/- per month would be subject to final result of the proceedings in R.C.S. No.385/2005, the following order is passed :

- (i) The order dated 31/03/2012 passed below Exhibit-83 is maintained.
- (ii) The proceedings in R.C.S. No.385/2005 are expedited.
- (iii) The amounts paid by the petitioner shall be subject to final result of the proceedings before the trial Court. The petitioner is granted time of six weeks from today to comply with the directions issued by the trial Court in its order dated 31/03/2012.
- (iv) The Writ Petition stands dismissed with no order as to costs.

JUDGE

-: C E R T I F I C A T E :-

“ I certify that this Judgment/order uploaded is a true and correct copy of the original signed Judgment/order.”

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