

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4641 OF 1994

Kusumbai Sudam Phirke

Petitioner

Versus

Kausalyabai Murlidhar Phegade

Respondent

Mr.S.R. Barlinge advocate for the petitioner

Mr.S.V. Dixit advocate for the Respondent

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 13th July, 2017.)

PER COURT :-

1 I have heard the submissions of learned the counsel for the litigating sides and have perused the record available.

2 The petitioner – tenant has put forth prayer clause ‘A’ as under:-

“ (A) By a writ of certiorari or any other appropriate writ of like nature, the impugned Judgment and Order dated 11.10.1994 passed by the learned IVth Additional District Judge, Jalgaon in C.R.A.No.4/1994 and the consequent order dated 8.12.1994 passed by the learned Civil Judge, Junior Division, Bhusaval below Exhibit 31 in Misc. Rent Application No.33/1993 be quashed and set aside. ”

3 This Court has granted exparte interim relief to the petitioner in terms of prayer clause ‘B which reads as under:-

“ B. Pending hearing and final disposal of this writ

petition, the proceedings in R.C.S.No.33/1993 as well as Misc. Rent Application No.33/1993 pending before the Civil Judge, Bhusaval, be stayed. “

4 The petitioner is aggrieved by the order dated 11.10.1994, by which Civil Revision Application filed by the petitioner was dismissed, based on the purshis Exhibit 20 filed by both the sides. Consequentially, the petitioner was directed to deposit the arrears of rent, as was directed by the lower Court, by order dated 16.7.1994, without prejudice to the rights of the litigating sides in R.C.S. No.331/1993. The petitioner was given time up to 11.11.1994 to deposit the said money and the said Rent Application No.33/93 were directed to be heard together expeditiously.

5 The petitioner has also challenged the order dated 8.12.1994 passed by the Trial Court on Exhibit 31 on the rent Application, by which the defence of the petitioner in R.C.S.No.331/1993 was struck off, as he failed to deposit the petitioner.

6 By exparte ad interim order of this Court, the proceedings have been stayed for the last 23 years.

7 Though Shri Dixit strenuous prays for the dismissal of this petition with costs and though I find that the petitioner has unjustifiably failed to deposit arrears of rent, I find it more equitable to grant one more chance to the petitioner to deposit the arrears of unpaid rent amount before the Trial Court within a stipulated period and expedite the proceedings.

8 In the light of the above, this petition is partly allowed. No interference is caused in the judgment of the Appeal Court dated 11.10.1994. However, the order dated 8.12.1994 passed by the Trial Court is set aside on the following conditions:-

a) The Trial Court shall issue notice to the litigating sides in RCS No.331/1993, which would also amount to issuing notice to the parties in Rent Application No.33/1993.

b) The petitioner, after appearance before the Trial Court on such notice, shall pay the arrears of rent within a period of 30 days, without prejudice to the rights of the defendants, failing which the Trial Court shall strike off the defence of the petitioner defendant/legal heir tenant, if any, in RCS No.331/93 and proceed to decide the said case.

c) In the event, the petitioner deposits the said amount, the

plaintiff shall withdraw the said amount, without prejudice to the rights in the proceedings.

d) The trial Court shall decide the suit as well as the rent Application as expeditiously as possible and preferably within a period of six months from the date of appearance of the parties, keeping in view that the suit proceedings are 24 years old and had been stayed.

9 All the contentions of the litigating sides as well as the request of the plaintiff for interest on arrears of rent are kept open.

10 Rule is partly made absolute in the above terms.

(RAVINDRA V. GHUGE , J)

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