

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 226 OF 2017

1. Mr. Karan K.

Indian National, Major of age
s/o. Mr. Annaya Shrinivas
r/o Flat No. 2C-F2, First Floor
Models Millenium Vistas
Caranzalem-Tiswadi
Goa

... Petitioner

Versus

Mr. Antonio De Matos Sequeira Almeida
Indian National, Major of age
r/o House No. 103-1
Opposite Municipal Market
General Bernard Guedes Road
Panaji – Goa

... Respondent

Ms. Gautami Kamat, Advocate for the petitioner.
Mr. Myron D'souza, Advocate for the Respondent.

Coram :- M. S. SONAK, J

Date : 21st April, 2017.

ORAL JUDGMENT:

Heard Ms. Gautami Kamat, learned Counsel appearing for the petitioner and Mr. Myron D'souza, learned Counsel appearing for the respondent.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned Counsel for the petitioner.

3. The challenge in this Petition is to the Order dated 07.01.2017 made by the learned Trial Judge directing the petitioner (defendant) to deposit arrears of rent @ Rs.13,500/- per month from July, 2013 onwards in the account of the respondent (plaintiff).

4. Ms. Kamat, learned Counsel for the petitioner submits that such an order is without jurisdiction, since, there was serious dispute as to whether or not the petitioner is indeed in arrears from July, 2013. She points out that even the application at Exhibit 11-D, upon which, the impugned order has been made, had applied for deposit of monthly compensation from July, 2015. She submits that learned Trial Judge has obviously erred in directing not just deposit but payment from July, 2013 directly into the account of the respondent. She submits that such order virtually amounts to partly decreeing the suit even before trial. For all these reasons she submits that the Impugned Order is liable to be interfered with.

5. Mr. D'souza, learned Counsel for the respondent submits that in terms of the agreement between the parties, the licence fee had to be paid by cheque or demand draft. From July, 2013 onwards there is no payment and the petitioner, has not placed on record the mode by which such payment made have been legally effected. He submits that even the notice demanding arrears was not responded to. He submits that under Order XV-A of the

CPC, it is incumbent upon a person who claims to be a tenant or licensee to make deposit of the rent/compensation amount as a precondition in deciding the suit. He submits that in the written statement it is admitted that petitioner is in arrears from July, 2015. The relief in the application at Exhibit 11-D was under the assumption that provisions of Order XXXIX Rule 10 of the CPC apply.

6. Mr. D'souza submits that this is a case governed by Order XV-A of the CPC and the mere quoting of wrong legal provision, never fetters the jurisdiction of the Court to grant relief under the appropriate provision of law. Mr. D'souza also points out that the defendant is a senior citizen and further, the licence fee is his source of income and livelihood. For all these reasons Mr. D'souza submits the impugned order warrants no interference and the respondent should be permitted to withdraw the compensation amount which is deposited by the petitioner in this Court in pursuance of this Court's Order dated 16.03.2017.

7. Upon due consideration of the submissions and after perusing the record, I am satisfied that the impugned order is required to be upheld with certain modifications and clarifications:

8. Admittedly, the application at Exhibit 11-D taken out by the respondents had prayed for deposit of monthly compensation only from July

2015. This is possibly because there was a dispute with regard to payment of compensation from July 2013 to July 2015. This is also not a case where the learned trial judge in the impugned order, after adverting to the provisions of Order XV-A of the C.P.C. and the material on record, as recorded in conclusions a direction for payment/deposit of compensation from July 2013 was warranted, even though, the respondent had only applied for payment/deposit from July 2015. The reference to July 2013, in the facts and circumstances of the present case appears to be more in the nature of accidental slip. At this stage, therefore, when the respondent had himself applied for deposit from July 2013 onwards, it is not possible to sustain the inadvertent direction for payment w.e.f July 2013 instead of July 2015. To this extent, therefore, the impugned order warrants modification.

9. Further, although the correct procedure in such a case would be to direct the lessee or licensee to deposit rent or compensation in the Court and thereafter, permit the landlord or licensor to withdraw the same in terms of Order XV-A (3) of the C.P.C. In the facts and circumstances of the present case there is no necessity to disturb the direction issued by the learned trial judge for deposit of such amount directly in the account of the respondent licensor. However, the payment of such amount by the petitioner and the appropriation of such amount by the respondent shall be without prejudice to their respective contentions. Further, such payment shall be subject to final

order in the suit.

10. The dispute between the parties as regard the arrears from July 2013 and July 2015 will have to be determined on the basis of the trial in the suit. Further, it is clarified that reference to the parties as landlord or licensor or lessee or licensee should not be construed as acceptance by this court on any legal status of the parties. Again that is a matter which would have to be determined in the course of the trial in the suit of this nature. However, the party in possession, where possession of the suit premises whether as licensee or licensee cannot continue with the possession and at the same time avoid payments towards the rent or the licence fee. Considered from such perceptive, there is no reason to interfere with the impugned order. Except that modification to the aforesaid extent is required to be directed.

11. The decision of this Court in the case of Gautamchand B. Dige Vs. Dhondiram D. Gurav 1986 (88) BOMLR 5, upon which reliance was placed by Mr. D'Souza turns on its own facts. In the said case, the lessor had not applied for relief for deposit of arrears for a particular date, as is the fact situation in the present case. The decision, therefore, does not assist the case of the respondent to insist that the direction for payment from July 2013 instead of July 2015 shall be upheld. The issue as to whether the petitioner is in arrears from July 2013 is a matter which will have to be decided in the

suit based upon the evidence in the course of the trial.

12. Accordingly, this petition is disposed of with the following order:

ORDER

- (a) The Impugned Order is modified and the arrears are to be computed from July, 2015 and not July, 2013;
- (b) The receipt of arrears by the respondent shall be in terms of Order XV-A(3) of the CPC and further, shall be subject to final orders that will be made in the suit;
- (c) The petitioner to continue to deposit the compensation amount @ Rs.13,500/- per month in the account of the respondent on or before 7th day of each month;
- (d) In case of any default, the respondent shall be entitled to apply to the learned Trial Judge for order to direct the defendants in terms of Order XV-A of the CPC;
- (e) Such application, as and when made, will be considered by the learned Trial Judge in accordance with law on its own merits;
- (f) The Miscellaneous Application No. 359 of 2017 is

allowed and the respondent is permitted to withdraw the amount deposited by the petitioner in this Court;

- (g) Rule is made partly absolute to the aforesaid extent;
- (h) All contentions of the parties are left open in the suit.
- (i) There shall be no order as to costs;

13. All concerned parties to act on the authenticated copy of this Order.

M. S. SONAK, J

msr.