

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 1007 OF 2017

Mr.(Dr.) Avinash Madhukar Mondkar
and another.

.. Petitioners

Vs

Smt. Vishni Narsingdas Adnani
and others.

.. Respondents

Ms.Ranjana Parikh, for Petitioners.

Ms.Kavita Shah, for Respondent Nos.1, 2, 4A & 4B.

Coram : N.M.Jamdar, J.

Date : 16 March 2017.

P.C. :

By the impugned order the Appellate Bench of the Small Causes Court, Mumbai has allowed the Revision Application filed by the Respondent-landlord and has set aside the order passed by the learned Small Causes Court Judge dated 10 February 2015.

2. By order dated 10 February 2015, the learned Small Causes Court Judge modified the earlier order dated 3 April 2014. The learned Judge substituted the amount of ₹960 occurring in paragraph 2 of the order dated 3 April 2014 with ₹160 and the consequential changes in respect of the arrears. The Appellate bench set aside this reduction. According to the learned counsel for the

Petitioners the impugned order has resulted in additional liability of almost ₹800 per month and arrears of amount of ₹10,000.

3. The order dated 3 April 2014 was passed on the application of the Petitioner himself. The Appellate Bench observed that such modification by the trial Judge under inherent powers, was not warranted. The learned counsel for Petitioners submitted that the Appellate Bench did not have jurisdiction as the order was not revisable.

4. The Petitioner has invoked the extraordinary jurisdiction of this Court. It is settled that the power of superintendence under Article 227 is limited. Interference is not warranted in every order. Even assuming the Appellate Bench had no jurisdiction, consequences of setting aside the impugned order will have to be kept in mind even though incorrect, unless gross failure of justice is pointed out.

5. I find no failure of justice in the present case to warrant interference. The Petitioners at present are occupying a flat admeasuring 630 sq.ft. situated at Mahim, Mumbai which is a decent locality in city of Mumbai. Considering the locality and the size of the premises even if Petitioners are directed to deposit ₹ 960 per month it cannot be said that it is drastic or is penal imposition. In the plaint, Respondent-landlord has asserted that even the contractual

rent is ₹ 1000, which has been denied by the Petitioners. This deposit can be made subject to the final orders in the Suit. As far as the additional deposit of ₹ 10,000 is concerned, Petitioners can always deposit the same, subject to the final orders. It is also clarified that the question as to whether the Petitioners are required to deposit the amount at the rate of ₹ 960 or at the rate of ₹ 160 will be considered at the time of the final outcome of the Suit and deposit made by the Petitioners will be subject to the outcome of the Suit. It is open to the Respondent-landlord to make an application for withdrawal of the amount so deposited, which will be considered by the learned Small Causes Court Judge, on its own merits. The amount of arrears shall be deposited within period of four weeks.

6. Writ Petition is disposed of in above terms.

(N.M.Jamdar, J.)