

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2852 OF 2016**

Shri Pravinkumar Jethalal Dave & Ors

..Petitioners

Vs.

M/s. Hindustan Organisers Pvt Ltd.

..Respondent

**Mr. S. N. Vaishnawa a/w Ms Nupur Mukherjee i/b N.N. Vaishnawa & Co.
for the Petitioners**

Mr. P. N. Patwardhan for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 3rd MAY, 2017

P.C.

1 The above Writ Petition has been filed challenging the order dated 5-9-2015 passed on application Exhibit 88 filed by the Petitioners in the Suit being R. A. E. & R Suit No.1129/1859 of 2002. By the said order, the said application Exhibit 88 which was filed for seeking a direction against the Respondents in the matter of directing the Respondents to deposit the outgoings of the housing society in question in the Small Causes Court, came to be rejected.

2 The Suit in question i.e. R.A.E & R Suit No.1129/1859 of 2002 has been filed by the Petitioners against the Respondents seeking their eviction on the grounds as urged in the said Suit. The grounds are interalia the bonafide requirement of the Plaintiffs and also non payment. The Suit is presently in seisin of the Learned Judge of the Small Causes Court. The

applications Exhibit 88 has been rejected on the ground that such directions could not be issued in a Rent Suit. The direction was also rejected on the ground that the Respondents herein are claiming to be the owners of the suit flat on the basis of a document allegedly executed by the mother of the Plaintiffs in the year 1979. There is no dispute about the fact that the Respondents are in occupation of the flat in question which is the subject matter of the Suit. However, it is the case of the Respondents that one room on the back side is in occupation of the Plaintiffs. It is also the case of the Respondents that they have paid the outgoings up to the year 2012.

3 The Learned Counsel appearing on behalf of the Petitioners Mr. S. N. Vaishnawa has placed before this Court a letter issued by the society to the Petitioners on 29-4-2017. The letter discloses the outstanding amount due from April 2016 to March 2017 along with interest @ 12% p.a. is Rs.8,90,000/- Since the Respondent is admittedly in occupation of the flat in question and since the reasons on which the application Exhibit 88 has been rejected, the said reasons in my view are unsustainable as the Petitioners cannot approach the Co-operative Court against the Respondent as the Respondent is admittedly a non member and therefore there cannot be any invocation of Section 91 of the Maharashtra Co-operative Societies Act.

4 In my view, the interest of justice would be served if pending the

Suit the following directions are issued:

- (i) The impugned order dated 5-9-2015 would stand quashed and set aside and the application Exhibit 88 would stand allowed.
- (ii) The Respondent is directed to make the payment of Rs.8,90,000/- to the society in question i.e. Sind Work Co-operative Housing Society Ltd. within 6 weeks from date.
- (iii) The Learned Counsel appearing on behalf of the Respondent Mr. Patwardhan assures the court that he would impress upon the Respondent to make the said payment.
- (iv) The payment that would be made by the Respondent would be without prejudice to the rights and contentions of the parties in the Suit.
- (v) The society in question would issue a provisional bill in duplicate in the name of the Petitioners a copy of which to be given to the Respondents In the said receipt the factum of the payment being received from the Respondent would be mentioned. The said receipt would also be without prejudice to the rights and contentions of the parties and issuance of the receipt and mentioning therein the factum of the payment made by the Respondent would not create any right in favour of the Respondent. The

Respondent would continue to pay the monthly outgoings as also the payment for repairs if any to the society in question during the pendency of the Suit.

(vi) In the event, the payment is not made by the Respondent then the Petitioners would be entitled to file an application for striking of the defence of the Respondent. If any such application is filed, the same would be tried on its own merits and in accordance with law.

(vii) The letter issued by the society to the Petitioners dated 29-4-2017 is taken on record and marked as "X" for identification.

5 With the aforesaid directions, the Writ Petition is accordingly disposed of.

[R.M.SAVANT, J]