

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2721 OF 2016**

Shri Pravinkumar Jethalal Dave

..Petitioner

Vs.

M/s. Western India Oil Distributing Co. & Anr

..Respondents

**WITH
WRIT PETITION NO.2764 OF 2016**

Shri Pravinkumar Jethalal Dave

..Petitioner

Vs.

M/s. Western India Oil Distributing Co. & Anr

..Respondents

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

Mr. P N. Patwardhan for the Respondent Nos.1 and 2

CORAM : R. M. SAVANT, J.

DATE : 3rd MAY, 2017

P.C.

1 The above Writ Petition No.2721 of 2016 has been filed challenging the order dated 5-9-2015 passed on application Exhibit 63 filed by the Petitioner in the Suit being R. A. E. & R Suit No.419/607 of 2003. By the said order, the said application Exhibit 63 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 In so far as Writ Petition No.2764 of 2016 is concerned, the said

Writ Petition challenges that order dated 5-9-2015 passed by the Learned Judge of the Small Causes Court rejecting the application Exhibit 80 filed in the said Suit. The said application Exhibit 80 was filed seeking a direction that the Respondents be directed to pay the outgoings directly to the society.

3 The Suit in question i.e. R.A.E & R Suit No.419/607 of 2003 has been filed by the Petitioners against the Respondents seeking their eviction on the grounds as urged in the said Suit. The grounds are inter alia 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 Exhibits 63 and 80 have 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.

4 The Learned Counsel appearing on behalf of the Petitioners Mr. S. N. Vaishnawa has placed before this Court a statement issued by the society

given to the Petitioner on 2-5-2017. The statement discloses that for the period 31-12-2016 up to June 2017 the outstanding amount due of the maintenance and the repair charges is Rs.29,50,941/-. Since the Respondents are admittedly in occupation of the flat in question and since the reasons on which the applications Exhibits 63 and 80 have been rejected, the said reasons in my view are unsustainable as the Petitioners cannot approach the Co-operative Court against the Respondents as the Respondents are admittedly non members and therefore there cannot be any invocation of Section 91 of the Maharashtra Co-operative Societies Act.

5 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 applications Exhibits 63 and 80 would stand allowed.
- (ii) The Respondents are directed to make the payment of Rs.29,50,941/- to the society in question i.e. Alpana Co-operative Society within 6 weeks from date.
- (iii) The Learned Counsel appearing on behalf of the Respondents Mr. Patwardhan assures the court that he would impress upon the Respondents to make the said payment.
- (iv) The payment that would be made by the Respondents 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 Petitioner 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 Respondents would not create any right in favour of the Respondents. The Respondents 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 Respondents then the Petitioners would be entitled to file an application for striking of the defence of the Respondents. If any such application is filed, the same would be tried on its own merits and in accordance with law.

(viii) The statement given by the society to the Petitioner is taken on record and marked as "X" for identification.

6 With the aforesaid directions, the Writ Petitions are accordingly disposed of.

[R.M.SAVANT, J]