

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

WRIT PETITION NO.3065 OF 2017

Shri. Madhavlal N. Pittie

..Petitioner

Versus

Bharat Kishore Gupta

..Respondent

Shri. B. N. Shukla i/by B. N. Shukla & Co., for the Petitioner.

Shri. Rajesh B. Jain a/w Ameya Mahajan i/by Legal Juris for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 21st APRIL, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 20.01.2017 passed by the Appellate Bench of the Small Causes Court. By the said order, the Appellate Bench of the Small Causes Court has partly allowed the Appeal filed by the Respondent herein and the direction/injunction as contained in clause (2) of the operative part came to be issued. The said clause (2) is reproduced hereinunder for the sake of ready reference :-

“(2) The respondent/plaintiff, his agents, servants, representatives, his security guards or any other person claiming through him are hereby restrained from causing obstruction in carrying out repairs in the suit premises by the defendant and also using the suit premises by the defendant, till disposal of the suit.”

2 The Petitioner herein has filed RAE Suit No.663/1087 of

2011 for eviction of the Respondent inter-alia on the ground of non-user, wastage and damage to the suit premises. The suit is pending before the Trial Court i.e. the Learned Judge of the Small Causes Court. In the said suit, the Respondent filed an application Exh.54 for a mandatory injunction in respect of the essential supplies as also for being permitted to carry out repairs. The said application Exh.54 came to be rejected by the Trial Court on the ground that the Respondent had not made out a prima-facie case for the grant of injunction restraining the Petitioner herein i.e. the Plaintiff in the suit from interfering with the repair work being carried out as according to the Trial Court the premises were kept locked from the year 2000. However the Trial Court issued a mandatory injunction for restoration of the essential services.

3 The part rejection of the application by the Trial Court by order dated 07.01.2016 was taken exception to by the Respondent by filing Misc. Appeal No.89 of 2016. The Appellate Bench of the Small Causes as indicated above, has allowed the Appeal and has thereby permitted the Respondent to carry out repairs albeit after obtaining permission of the landlord as contemplated by Section 14 of the Maharashtra Rent Control Act, 1999 (For short “the said Act”). The Appellate Bench of the Small Causes Court however did not deem it appropriate to interfere with the mandatory injunction which was

granted in favour of the Respondent herein in so far as the restoration of water and electricity supply is concerned. The Learned Counsel appearing on behalf of the Petitioner Shri. B. N. Shukla would contend that such an injunction as granted vide clause (2) of the operative part of the impugned order could not have been granted considering the fact that the suit is filed for eviction on the ground of non-user, wastage and damage.

4 In my view, it is not possible to accept the said contention as the Appellate Bench of the Small Causes Court has qualified the injunction granted by making observations in the body of the said order to the effect that the Respondent would have to apply to the landlord under Section 14 of the said Act and it is only after the said application is considered one way or the other by the landlord that the repairs could be carried out. In my view, therefore, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]