

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2330 OF 2017
IN
WRIT PETITION NO. 6936 OF 2014

Sunita A. Ramnani and anr.	..Applicants/ Org. Respondents
vs.	
Pratima P. Wagh and ors.	..Respondents Org. Petitioners.

Mr. R.G. Singh i/b M/s. Thakore Jariwala and associates for the Applicants/Org. Respondents.
Mr. Gobinda C. Mohanty i/b Mohanty & Associates for the Respondents/Org. Petitioners.

CORAM : M. S. SONAK, J.
DATE: 03 OCTOBER 2017

PC :

IN CIVIL APPLICATION NO. 2330 OF 2017:

- 1] Not on board. Upon production, taken on production board.
- 2] There is default on the part of the respondents in complying with the orders dated 21st September 2015 and 3rd February 2016 in the matter of deposit of compensation at the rate of Rs.30,000/- per month. The applicants states that the default is from 1st March 2016. The arrears, by now, have mounted up to Rs.6 lakhs or thereabouts. Even earlier, the respondents had committed default, which were however, waived by this Court vide its order dated 3rd February 2016.

3] Since, this is the second default, learned counsel for the petitioners in the petition is justified in contending that no indulgence needs to be shown to the defaulters.

4] However, considering the fact that the suit for eviction is still pending and this is not a case where decree for eviction had already been made, it will be appropriate to grant yet another opportunity to the defaulters-applicants in Civil Application No. 2330 of 2017. Such opportunity, however, has to be conditional upon the applicants in the civil application paying costs quantified at Rs.50,000/- to the respondents in the civil application, i.e., Waghs.

5] Accordingly, leave is granted to the applicants in the civil application to deposit the arrears of compensation at the rate of Rs.30,000/- per month up to date within a period of six weeks from today. Such deposit will have to be made before the Small Causes Court where the main suit is pending. In addition, the applicants to deposit in the Small Causes Court an amount of Rs.50,000/- by way of costs payable to Waghs. Upon deposit, the Waghs, shall be entitled to withdraw the amount of Rs.50,000/- unconditionally.

6] In case of failure to deposit the arrears and further, in case of failure to continue to deposit compensation at the rate of Rs.30,000/- per month on or before the 10th day of each succeeding month, the Waghs shall be at liberty to apply to the Small Causes Court for appropriate orders, including, orders for revocation leave to defend. Such application, as and when made, to be considered on its own merits and in accordance with law.

7] The civil application is disposed of in the aforesaid terms.

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8] In the main petition, the challenge is to the orders made by the Small Causes Court and the Appellate Bench of the Small Causes Court in refusing to direct deposit of compensation pending proceedings under Section 41 of the Presidency Small Causes Court Act 1882.

9] Although, a leave and licence agreement dated 13th May 2015 has been produced on record by Waghs, at this stage, it is not necessary to take the same into consideration and direct deposits on such basis. However, considering that the suit premises are located at Bandra and they ad-measure almost 1800 sq.ft., it is only appropriate that the respondents in the petition, deposit a sum of Rs.30,000/- per month before the Small Causes Court during pendency of the proceedings. Such

deposit, as directed earlier, to be made on or before the 10th day of each succeeding month. In case of any default, the petitioners, shall be at liberty to take out appropriate proceedings, including proceedings for striking of defence or such application, as and when made, to be considered on its own merits and in accordance with law.

10] In case the arrears as well as costs are deposited within a period of six weeks from today, the pending application seeking striking of defence to stand disposed of. However, if the respondents fail to make such deposit, the Small Causes Court is at liberty to dispose of such application on its own merits and in accordance with law.

11] The hearing in the proceedings before the Small Causes Court is also expedited.

12] With aforesaid directions, even the main petition is disposed of.

13] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)