

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8978 OF 2017

Shamsher Khan Vazir Khan Pathan .. Petitioner
vs.
Dr. Mustafa Yusuf Khokhawala .. Respondent

Mr. Javed Akhtar Khan for Petitioner.
Ms Priya Kone i/b. Snehal Modi for Respondent.
Dr. Mustafa Yusuf Khokhawala – Respondent present in person.

CORAM : M. S. SONAK, J.
DATE: 31 AUGUST 2017

P.C :

- 1] Not on board. In view of urgency, taken on production board.
- 2] The challenge in this petition is to the orders dated 30th January 2017 and 15th July 2017, in terms of which, defence of the petitioner has been struck off on the ground of non compliance with the directions for deposit of the arrears of compensation.
- 3] In terms of the orders made by the learned trial Judge, there is no doubt that the arrears of compensation upto August 2017 have run upto Rs.5,90,000/-. Mr. Khan, learned counsel for the petitioner submits that even before the period of 90 days which is prescribed for instituting revision against the direction for deposit of compensation could conclude, orders were made to strike of the petitioner's defence. Mr. Khan points out that no notice as is

contemplated under the law was issued to the petitioner and the petitioner was deprived of opportunity to show reasonable cause for non compliance of the order of deposit. Mr. Khan submits that at this stage, there was hardly any delay in compliance and the petitioner, had reasonable grounds to explain the marginal default.

4] Ms Kone, learned counsel for the respondent has submitted that there is no dispute that the petitioner has committed a default. In such circumstances, the petitioner, cannot claim any indulgence or any equitable reliefs. She points out that on the aspect of deposit and striking of defence, the petitioner, has delayed the proceedings when in fact on merits, the petitioner has no case whatsoever to retain possession of the suit premises.

5] Upon due consideration of the rival contentions, I am satisfied that the impugned order striking the defence of the petitioner requires interference though, subject to certain conditions to be complied with by the petitioner.

6] From the averments in the civil revision application and the grounds raised therein, it does appear that though the petitioner is relying upon technicality of non afford of opportunity to show cause, the fact remains that at least at the initial stage, the delay in deposit was not of very great magnitude. The order of striking of defence is

a harsh order which is not required to be made no sooner default is established. There has to be application of mind to the cause which a party shows and therefore, opportunity of showing cause is required to be afforded to defaulting party.

7] In the peculiar facts and circumstances of this case, rather than, remand the matter on this issue itself, it will be appropriate if the petitioner is directed to deposit a sum of Rs.5,90,000/- towards arrears of compensation on or before 30th September 2017. Further, the petitioner is also directed to pay costs assessed at Rs.35,000/- to the respondent on or before 30th September 2017. Such costs to be paid directly to the respondent by means of a demand draft or deposited before the trial court. Upon deposit, the respondent, shall be at liberty to withdraw the amount of compensation as well as costs without prejudice to his rights and contentions in the proceedings.

8] Needless to add that the petitioner will continue to deposit compensation at the rate of Rs.30,000/- per month as directed in the order dated 10th November 2016 on or before the 10th day of each succeeding month.

9] Mr. Khan, assures this Court that the petitioner will regularly deposit such amount in terms of the directions in the order dated

10th November 2016.

10] It is made clear that in case of failure to deposit the arrears of compensation and costs on or before 30th September 2017, the petitioner shall not have the benefit of this order and this petition shall be deemed to have been dismissed without any further reference to this Court. Notwithstanding such dismissal, the petitioner will still be liable to pay costs of Rs.35,000/- to the respondent.

11] The impugned orders striking of the defence of the petitioner are set aside subject to the aforesaid two conditions.

12] Petition is disposed of in the aforesaid terms.

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

(M. S. SONAK, J.)

Chandka