

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

**WRIT PETITION NO. 9702 OF 2017**

Mrs. Surekha Avichal Dhiwar

.. Petitioner

v/s.

Progressive Education Society

.. Respondent

Mr. Ashish S. Gaikwad for the petitioner

Mr. Siddharth R. Ronghe for the respondent

**CORAM : M.S. SANKLECHA, J.**

**DATED : 28<sup>th</sup> AUGUST, 2017**

**P.C.**

1. This petition is moved for urgent reliefs.
2. This petition under Article 227 of the Constitution of India challenges the order dated 1<sup>st</sup> August, 2017 passed by the Joint Civil Judge, Junior Division, Pune. By the impugned order, the application of the respondent was allowed and the petitioner was directed to handover the possession of the suit property within 30 days from the impugned order for having failed to comply with clause 4 of the order dated 15<sup>th</sup> December, 2016 of this Court in Writ Petition No.2935 of 2016 filed by the respondent Society.

3. The respondent (original plaintiff) is an Educational Society, registered under the Bombay Public Trusts Act, as a Charitable Trust. By an conducting agreement dated 1<sup>st</sup> October, 2011, the respondent herein (original plaintiff) permitted the petitioner herein (original defendant) to conduct a facility centre (for students) of photocopying, typing etc. in the suit premises for a period of 11 months on consideration of Rs.7,500/- per month.

4. Thereafter, the Collector, Pune directed the respondent Society to remove the facility centre as it was not authorized by the competent authorities. Accordingly, the respondent Society did not renew the conducting agreement with the petitioner and by letters dated 18<sup>th</sup> August, 2012 and 24<sup>th</sup> August, 2012 informed the petitioner that the agreement between them which comes to an end on 31<sup>st</sup> August, 2012, will not be possible to renew the same.

5. Inspite of the above, the petitioner did not give up possession of the suit premises, compelling the respondent herein to file a suit for perpetual injunction and for an order and direction that the petitioner herein be removed from the suit premises. The petitioner

objected the claim made in the suit. The respondent also filed an application seeking a direction to the petitioner to deposit of arrears of roughly aggregating to Rs.1.53 lakh along with the interest thereon and Rs.9,000/- per month as roughly for future use of the suit premises. The same was rejected by order dated 5<sup>th</sup> January, 2016 by the trial Court.

6. The respondent challenged the order dated 5<sup>th</sup> January, 2016 by preferring Writ Petition No.2395 of 2016 before this Court. By an order dated 15<sup>th</sup> December, 2016 this Court directed the petitioner to pay the arrears of license fees @ Rs.7,500/- from 1<sup>st</sup> January, 2013 to 31<sup>st</sup> December, 2016 within 8 weeks from the date of the order i.e. on or before 9<sup>th</sup> February, 2017 i.e. an aggregate amount of Rs.3.60 lakhs.

7. The petitioner failed to pay the same and had paid only a sum of Rs.2.78 lakhs on or before 18<sup>th</sup> February, 2017 as recorded in the impugned order. The reason according to the petitioner for not making the payment as stated in the impugned order, is that there was a fracture in her right hand and she was unable to sign the documents. It is further submitted by her before the trial Court that

she paid the amount of Rs.2.78 lakhs on 18<sup>th</sup> February, 2017 immediately on removal of the plaster. The trial Court after noting the directions given by the High Court and in particular a statement made on behalf of the petitioner that the petitioner will not apply for any extension of the eight weeks time granted for paying the amount of arrears from 1<sup>st</sup> January, 2013 to 31<sup>st</sup> December, 2016. Consequently, by the impugned order dated 1<sup>st</sup> August, 2017, the petitioner was directed to hand over the possession of the suit property within 30 days there from to the respondent in terms of the High Court order dated 15<sup>th</sup> December, 2016. However, the impugned order also made it clear that so far as the suit for injunction restraining the defendants from trespassing on the suit property is concerned, it held that the same would survive and would be decided on the basis of the evidence led by both the sides.

8. Mr. Gaikwad, learned Counsel appearing for the petitioner submits that he was unable to pay the amounts as directed by the order dated 15<sup>th</sup> December, 2016 of this Court for the reason that the petitioner's right hand was in plaster. Therefore, she could not sign the cheque within the stipulated time. Further, the petitioner was

under an incorrect impression that the amount of arrears to be paid was as Rs.2.78 lakhs and not Rs.3.60 lakhs, which resulted in shortfall of the payment in arrears. In the above view, it is submitted that the petition be admitted and the impugned order dated 1<sup>st</sup> August, 2017 be stayed.

9. I find that the earlier order of the Court dated 15<sup>th</sup> December, 2016 in Writ Petition No.2935 of 2016 is unequivocal. The same was passed *inter alia* on the statement being made on behalf of the petitioner that the petitioner will not apply for any extension of time for paying the amount of arrears to the respondent. It was also made clear that in the order dated 15<sup>th</sup> December, 2016 of this Court in case the petitioner fails to pay the arrears within 8 weeks as provided therein, the petitioner will hand over the possession of the suit premises to the respondent.

10. It is an undisputed position that the amount of arrears have not been paid within 8 weeks from the date of the order dated 15<sup>th</sup> December, 2016 passed in Writ Petition No.2935 of 2016. In the above view, it cannot be said that the impugned order dated 1<sup>st</sup> August, 2017 is without jurisdiction or in excess of jurisdiction or so

perverse that this Court is required to exercise its extraordinary supervisory jurisdiction under Article 227 of the Constitution of India. The trial Court is bound by the impugned order dated 15<sup>th</sup> December, 2016. Accordingly, no interference would be warranted under Article 227 of the Constitution of India in regard to the impugned order.

11. Accordingly, the petition is dismissed.

12. At this stage, Mr. Gaikwad, learned Counsel for the petitioner states that the petitioner is in possession of the suit property since 1994 and seeks a stay of this order for a period of 8 weeks, so as to challenge this order before the Apex Court. Mr. Ronghe, learned Counsel appearing for the respondent Society objects to stay of this order.

13. In the peculiar facts of the case, it may be appropriate to stay my order for a period of six weeks from today, to enable the petitioner to challenge the same before the Apex Court.

**(M.S. SANKLECHA, J.)**