

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7865 of 2017

Amanollah Merwan Irani & Anr.	..	Petitioners
vs.		
Naagraj Ganeshmal Jain	..	Respondent

WITH
CIVIL REVISION APPLICATION NO. 488 OF 2017
WITH
CIVIL APPLICATION NO. 315 OF 2017

Amanollah Merwan Irani & Anr.	..	Applicants
vs.		
Naagraj Ganeshmal Jain	..	Respondent

Mr. P. S. Dani – Senior Advocate with Mr. Rajesh Kanojia i/b. Res
Juris for Petitioners / Applicants.
Mr. Vishal Ghosalkar for Respondent.

CORAM : M. S. SONAK, J.
DATE: 04 OCTOBER 2017

P.C :

1] After the matter was argued for some time, learned counsel for the parties, on the basis of instructions from their respective clients, agree that this petition can be disposed of with the following agreed order :

(A) The impugned orders dated 5th August 2017 made by the Appellate Bench of the Small Causes Court and the exparte decree dated 10th January 2013 made by the Small Causes Court are set aside. RAE & R. Suit No. 638/1028 of

2012 is restored to the file of the Small Causes Court;

(B) The Small Causes Court is directed to dispose of RAE & R. Suit No. 638/1028 of 2012 on its own merits and in accordance with law as expeditiously as possible and in any case within a period of 18 months from the date of production of authenticated copy of this order;

(C) The respondent is at liberty to withdraw the amount of Rs.18,00,000/- (Rupees Eighteen Lakhs) deposited by the petitioner in this Court to the account of Writ Petition No. 7865 of 2017. Out of this, the respondent to appropriate the amount of Rs.14,00,000/- (Rupees Fourteen Lakhs) towards payment of municipal taxes in respect of the suit premises. The respondent to file affidavit as well as receipt of such payment before the Small Causes Court within a period of four weeks from the date of withdrawal of such amount from this Court;

(D) The respondent shall be entitled to appropriate an amount of Rs.4,00,000/- (Rupees Four Lakhs) towards the arrears of rent / compensation in respect of the suit premises;

(E) During the pendency of the suit before the Small Causes Court, the petitioner, to deposit before the Small Causes Court an amount of Rs.60,000/- (Rupees Sixty

Thousand) per month on or before the 5th day of each succeeding month. Out of this amount, the respondent shall be entitled to withdraw the amount of Rs.30,000/- (Rupees Thirty Thousand) per month;

(F) The withdrawal of the amount of Rs.18,00,000/- (Rupees Eighteen Lakhs) as also further withdrawals shall abide by final orders that may be passed by the Small Causes Court in the suit. This is because, the petitioner has certain disputes as regards payment of taxes in respect of the suit premises;

(G) The petitioner to file affidavit before the Small Causes Court to the effect that the petitioner alone is in possession of the suit premises and further to undertake in that affidavit that the petitioner will not create any third party rights or part with possession of the suit premises;

(H) In case of any non compliance with the aforesaid conditions, the respondent is at liberty to apply to the Small Causes Court for appropriate orders.

2] The Writ Petition No. 7865 of 2017 is disposed of accordingly.

3] All contentions of all parties on merit are kept open to be determined by the Small Causes Court.

4] The parties to appear before the Small Causes Court on 13th October 2017 and produce authenticated copy of this order.

5] The Civil Revision Application and the Writ Petition, and pending applications, if any, are also disposed of in terms of the aforesaid agreed order.

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

(M. S. SONAK, J.)

Chandka