

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

WRIT PETITION NO.12166 OF 2015

Shri. Vijay Balasaheb Patil
Versus

..Petitioner

Shri. Bapusaheb Ganapati Nipanikar
Since deceased through his LRs
Smt. Hirabai Bapusaheb Nipanikar
Since deceased through his LRs
Sou. Shobha Vilasrao Upase and others

..Respondents

Shri. Rajesh B. Parab for the Petitioner.
Shri. Surel S. Shah for the Respondent Nos.1 to 6.

CORAM : R. M. SAVANT, J.
DATE : 21st APRIL, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 01.10.2015 passed by the Learned 5th Joint Civil Judge, Junior Division, Kolhapur, by which order, the application Exh.82 filed by the Petitioner for dismissal of the execution proceedings came to be rejected.

2 The execution proceedings being Regular Darkhast No.554 of 2012 have been filed for execution of the decree passed in Regular Civil Suit No.1078 of 2003 which was filed under Section 16(1)(i) of the Maharashtra Rent Control Act, 1999. The said decree is on the ground of default in payment of rent committed by the Petitioner herein, and also

on the ground of bonafide requirement of reconstruction. The said decree came to be confirmed in Appeal on account of the fact that the Appeal filed by the Petitioner came to be dismissed on 09.01.2012. Thereafter a Civil Revision Application came to be filed by the Petitioner against the said judgment and order dated 09.01.2012 of the Lower Appellate Court. It seems that before this Court in the said Civil Revision Application, a statement came to be made that the decree would not be pressed on the ground of default. It is thereafter that an application for amendment Exh.18 came to be filed by the Respondents/landlords for amendment of the execution application i.e. Regular Darkhast No.554 of 2012 so as to delete the part of the application seeking execution of the decree on the ground of default in terms of the statement made by them before this Court which statement was accepted by this Court whilst dismissing the Civil Revision Application.

3 It is on account of the execution sought, that the Petitioner filed the instant application Exh.82 seeking the relief that the execution proceedings be dismissed on the ground that the Respondents have made a statement before this Court that decree on the ground of default would not be pressed. The said application has been rejected by the Executing Court on the ground that though the decree on the ground of default is not being pressed, the same would not mean that the

Respondents/landlords would not be entitled to the arrears of rent. It seems that the Executing Court directed the Petitioner to deposit the arrears of rent which the Petitioner deposited in the sum of Rs.34,000/-. The Learned Counsel for the Petitioner states that the said amount has also been withdrawn by the Respondents.

4 During the course of the hearing of the above Writ Petition, the Learned Counsel Shri. Surel S. Shah would point out that the Respondents would give up their claim for arrears of rent and in furtherance of the said statement, the Respondents are also willing to return back the arrears of rent which they have withdrawn from the Executing Court if the Petitioner hands over possession of the suit premises which is required for redevelopment of the property.

5 The Learned Counsel for the Petitioner showed his reluctance to accept the said suggestion. The Learned Counsel for the Petitioner would submit that since the Respondents have filed the execution proceedings, they may pursue the same. This, in my view, shows the intention of the Petitioner who does not want to hand over the possession of the suit premises though the condition of the suit premises appears to be very precarious. The same must be for obvious reasons. Be that as it may, having regard to the reasons mentioned in the impugned order for

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rejection of the application Exh.82, in my view, no case for interference is made out. The Writ Petition is accordingly dismissed.

6 The Executing Court is directed to proceed with the execution expeditiously having regard to the present condition of the suit premises.

[R.M.SAVANT, J]