

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2715 OF 2018

Hemlata Chandru Manik through her
husband and C.A. Chandru L. Manik ... Petitioner
Vs.
Jayshree Parmanand Hinduja and another ... Respondents

Mr. H. K. Vazirani for Petitioner.
Mr. Abhijeet Rane for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 27, 2018

P.C. :

Heard Mr. Vazirani, learned Counsel for the petitioner and
Mr. Rane, learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 18.03.2017 passed by the learned Judge, Court Room No.11 of the Small Causes Court at Mumbai below exhibit-46 in R.A.E.Suit No.1252/2060 of 2011. as also the judgment and order dated 30.11.2017 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No.162 of 2017. By these orders, the Courts below dismissed the application made by the petitioner, hereinafter referred to as 'plaintiff', for striking out the defence of the respondents, hereinafter referred to as 'defendants', for want of compliance of the order dated 05.08.2015.

3. Rule. Mr. Rane waives service for respondents. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Vazirani submitted that by order dated 05.08.2015 below exhibit-27, the learned trial Judge directed the defendants to deposit the arrears of rent at the rate of Rs.800/- per month from 01.04.2007 to 28.02.2015 amounting to Rs.76,000/- along with 4% increase p.a. Rs.3,040/- along with interest @ 15% p.a. Rs.93,860/-, total amounting to Rs.1,72,900/-, within 14 days from the date of the order. The defendants were further directed to deposit in the Court, the future rent at the rate of Rs.800/- per month from March, 2015 till final disposal of the Suit on or before 10th day of each calendar month. The plaintiff was at liberty to withdraw the amount of rent as and when deposited by the defendants in the Court.

5. Mr. Vazirani submitted that defendants have not challenged the said order. Though defendants did not challenge that order, they also did not comply that order by depositing the amount as ordered. The plaintiff, therefore, took out application exhibit-43 for striking out the defence of the defendants for non-compliance of that order. The learned trial Judge rejected that application mainly on the ground that there are various disputed and complicated questions involved in the Suit, which require a fair trial. It is, therefore, necessary for the parties to adduce their oral and documentary evidence. The facts and circumstances of the present Suit are as such where a detailed enquiry of the complicated questions is necessary and the said inquiry is permissible when the defendants are allowed to participate.

6. As far as the Appellate Court is concerned, the Appellate Court observed that the parties are disputing title of each other and there is also denial to the relationship of landlord and tenant. Both the parties are claiming their independent right, title and interest in respect of the suit premises. It is, therefore, necessary to hold the detailed enquiry to adjudicate the real controversy between the parties. The Appellate Court

was further of the view that complicated questions are involved in the Suit which go to the root of the matter.

7. I find that the approach of the Courts below is totally perverse. The Courts below did not even advert to the order dated 05.08.2015, which was passed in the present case. The Courts below also did not consider the fact that defendants did not challenge that order. Defendants cannot be heard to say that they will not challenge the order and at the same time, they will not comply that order.

8. Mr. Rane submits that respondent No.2 - Bharat Parmanand Hinduja is present in the Court. He has tendered photocopy of his driving licence, which is taken on record and marked 'X' for identification. Upon taking instructions from him, he assures that within 6 weeks from today, defendants will deposit 50% of the arrears from 01.04.2007 till 30.06.2018 (as per clause 2 of the order dated 05.08.2015) and balance 50% within 12 weeks from today in the trial Court under intimation in writing to the plaintiff's Advocate. Defendants will go on depositing future rent in the trial Court @ Rs.800/- per month from July 2018 till disposal of the appeal, on or before 10th day of the following month. Statements made by Mr. Rane, on instructions, are accepted. The learned trial Judge had permitted the plaintiff to withdraw the amount of rent as and when deposited by the defendants in the trial Court. The plaintiff will be at liberty to withdraw the said amount only upon furnishing solvent security to the satisfaction of the trial Court. As the defendants have now shown readiness and willingness to comply the order dated 05.08.2015, I do not find that any case is made out for striking out the defence of the defendants. The impugned orders are modified in the aforesaid terms. Rule is disposed of accordingly with no order as to costs.

(R. G. KETKAR, J.)