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

CIVIL APPLICATION NO.154 OF 2018

IN

WRIT PETITION NO.8167 OF 2004

Ms.Shubhadha Shashikant Kuvalekar

(deceased) by LR Mr.Niket

Shashikant Kuvalekar

...Applicant

V/s.

Ms.Indirabai Kulkarni (deceased)

through LR Ms.Bharati Dixit

...Respondent

Mr.Hitesh Vyas with Mr.Ravindranath S.Naik for Applicant.

Mr.N. Walawalkar, Senior Advocate, i/b. Mr.S.N. Chandrachud for Respondent Nos.1A, 1B(iii) & 1B(iv).

Mr.Mihir Raut i/b. Mr.N.P. Deshpande for Respondent Nos.1B, 1B(I) and 1B(II).

CORAM : G.S. KULKARNI, J.

DATE : 29th JANUARY, 2018

P.C.:

Heard learned Counsel for the applicant and learned Senior Counsel for the respondent-landlord.

2. By this civil application, the applicant-tenant prays that the applicant be permitted to deposit arrears of rent of Rs.1,91,700/- before the Trial Court and the stay granted by this Court on execution of eviction decree by an order dated 7th July 2004 be continued. This petition was admitted on 3rd October 2005.

3. By an order dated 2nd April 2012, this Court had observed that considering the location of the property and the nature of construction as indicated in the valuation report which indicates saleable area of

about 1046 sq. ft., the rent of Rs.10,000/- per month be fixed as market rent in addition to the agreed rent of Rs.650/-. It was directed that the applicant shall deposit a sum of Rs.10650/- in the Trial Court with effect from 1st April 2012 out of which Rs.10,000/- will be invested in any nationalized Bank and Rs.650/- can be withdrawn by the land lady. By an order dated 15th June 2015, the petition was dismissed for default as none appeared for the applicant. The applicant had accordingly taken out civil application No.1455 of 2016 for restoration of the writ petition.

4. In the said civil application, the grievance as made on behalf of the respondent was that the applicant had deposited the rent only upto December 2014 and thereafter had failed to deposit any amount. By an order dated 22nd June 2016 passed in the said Civil Application, the Court had made elaborate observations on this conduct of the applicant. In paragraph 8 of the said order, the Court recorded the assurance as given on behalf of the applicant that within one week of the said order (22nd June 2016), applicant will deposit the arrears of rent from 1st January 2015 till 30th June 2016 in the trial Court under intimation in writing to the Advocate appearing for the respondents and that applicant will not seek further extension of time. Further assurance of the applicant was recorded that from July 2016, applicant will go on regularly depositing the rent in the trial Court under intimation in writing to the advocate appearing for the respondent, on or before 10th day of next succeeding month. It was also recorded that it was understood by the applicant that in case the applicant commits two consecutive defaults, the interim order shall stand vacated without further reference to the Court and the respondents will be at liberty to execute the decree. Further in paragraph 10 of the said order, it was made clear that in case the applicant does not deposit arrears of rent within one week from the date of the said order in the trial Court as also

does not go on regularly depositing the rent from July 2016 and committing two consecutive defaults, the interim order shall stand vacated without further reference to the Court.

5. It appears that in furtherance of the order dated 22nd June 2016 passed by this Court, the applicant had paid an amount of Rs.2,02,400/- to the respondent by Demand Draft which was the amount paid to the respondent for arrears of rent for 19 months. Further the remaining amount of Rs.12,400/- was paid towards rent to the respondent by the applicant. In paragraph 7 of the application, the applicant has set out that there was financial crisis and therefore, the amount of arrears of rent from July 2016 to January 2018 had remained to be paid. It is stated that there were serious financial difficulties and that the applicant was required to borrow money for the marriage of her daughter and thus, the applicant could not pay the arrears of rent.

6. In view of the default of the applicant, the respondent/landlord filed an application for executing the decree in regular Darkhast No.24/2016 praying that the possession warrant be issued in respect of the suit premises against the applicant. In view of the said application as moved on behalf of the respondent, the present application has been filed making a prayer to permit the applicant to deposit the amount of arrears of rent.

7. It is not in dispute that there was an obligation on the applicant to make payment of arrears fixed by this Court by order dated 2nd April 2012. Further in paragraph 8 of the order dated 22nd June 2016, the Court had recorded an assurance of the Advocate as given on behalf of the applicant that the applicant would deposit the arrears of rent from 1st January 2015 till 30th June 2016 in the trial Court under intimation in writing to the Advocate appearing for the respondents and that the

applicant will not seek further extension of time. Further assurance was given that from July 2016, applicant will go on regularly depositing the rent in the trial Court under intimation in writing to the Advocate appearing for the respondent, on or before 10th day of next succeeding month. It was also recorded that it was understood by the applicant that in case the applicant commit two consecutive defaults, the interim order shall stand vacated without further reference to the Court. By a clear direction as contained in paragraph 10 of the order which was an obligation on the applicant to regularly deposit the rent from July 2016 and on committing two consecutive defaults, the interim order was to stand vacated. On this background, the present application is required to be considered. In paragraph 7 of the present application, the applicant has set out that there were acute financial difficulties which prevented the applicant from depositing the rent regularly from July 2016 to January 2018.

8. The respondent-landlord has filed a detailed affidavit opposing this application. The contention as urged on behalf of the applicant on the financial difficulties is seriously disputed by the respondent. In paragraph 17 of the reply, the respondent has stated that the contentions of financial difficulties are false in as much as in the intervening period the applicant has purchased a car worth around Rs.8 Lakhs to Rs.10 Lakhs and also spent lavishly in the marriage of the daughter forgetting the liability cast on the applicant by the order passed by this Court to deposit the rent regularly.

9. Having considered the rival submissions, it is clearly seen from the order passed by this Court that the conduct of the applicant was callous and not acceptable in making a default in depositing the arrears of rent. Considering the order passed by this Court dated 2nd April 2012 and the further order dated 22nd June 2016, there is much substance in the

contention as urged by Mr. Walawalkar, learned Senior Counsel for the respondents, and more particularly paragraph Nos. 8 and 10 of the said order, the impression is that no indulgence ought to be granted. There is also much substance in the contention as urged on behalf of the respondent that the applicant has taken things for granted and completely overlooking the mandate of the order passed by this Court that in case of two consecutive defaults, the protection granted by this Court was to stand vacated. However, though the respondent is correct in the above submission, nonetheless considering the interest of justice and that the writ petition is of the year 2004 and pending final hearing, an indulgence as last and final opportunity needs to be granted to the applicant to deposit the amount of arrears of rent.

10. Accordingly, the applicant is permitted to deposit the arrears of rent of Rs.1,91,700/- in the trial Court within one week from today. It is made clear that if the amount is not deposited within a period of one week from today, the respondent shall immediately be entitled to pursue the execution proceedings as initiated under application dated 22nd December 2017. The above permission to deposit is also granted on a condition that the applicant within two weeks from today shall place an Undertaking on the record of this petition that the applicant on or before 10th day of every month shall continue to deposit the amount of rent as directed by this Court in the earlier orders. It is further made clear that if there is a breach of this undertaking even by one default, the respondent shall be at liberty to pursue the execution proceedings as already initiated.

11. It is further made clear that this is the last and final indulgence shown by the Court and henceforth the applicant would not be entitled to approach the Court to seek any extension for any reason whatsoever. Considering the conduct of the applicant as noted above, as also the

tendency of the applicant to make defaults in depositing the rent, the civil application cannot be simplicitor allowed and some costs are required to be imposed on the applicant. The costs are quantified at Rs.15,000/- to be paid by the applicant to the respondent within one week from today. Costs is a condition precedent.

12. Parties to act on the authenticated copy of this order.

[G.S. KULKARNI, J.]