

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4174 OF 2018

Vijay Dattatray Chendwankar

...Petitioner

Versus

Farooq Ebrahim Furniturwala And Anr.

...Respondents

....

Prof. Rohini M. Dandekar, Advocate for the Petitioner.

Mr. S.M. Vyas, Advocate for Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 26th JUNE, 2018

P.C.

1. Heard Ms.Rohini Dandekar, learned counsel for the petitioner and Mr.S.M. Vyas, learned counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'defendant' has challenged the judgment and order dated 3.10.2017 passed by the learned Judge, Court Room No.23 of the Court of Small Causes at Mumbai below Exhibits-21 and 25 in R.A.E. Suit No.1584/2319 of 2006 as also the judgment and order dated 19.1.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No.3/2018. By these orders, the Courts below directed the defendant herein to

deposit in Court the entire arrears of rent for the period from December, 2003 i.e. three years prior to institution of the suit till December, 2016 within a period of two months from the date of order. The defendant was further directed to deposit arrears of rent from 1.1.2017 till 30.9.2017 at the rate of Rs.6,888/- per month amounting to Rs.61,922/- within a period of two months from the date of the order. The defendant was further directed to go on depositing Rs.6,888/- per month from 1.10.2017 in the Court on or before 10th of each month regularly, until final disposal of suit. Said order is passed without prejudice to the rights and contentions of the parties.

3. In support of this Petition, Ms.Dandekar submitted that earlier two co-owners have instituted suit against the defendant. The present suit is instituted only by one of the coowners. The suit is, therefore, bad for non-joinder of other co-owner. She further submitted that the defendant was not given opportunity to defend the case. In fact the plaintiff has claimed the amount without establishing the factum of payment to the Corporation and other authorities. She has taken me through the written statement, applications at Exhibits-21 and 25 filed by the plaintiff and the replies filed by the defendant. She submitted that in fact at the time of remand by the Appellate Bench of the Small Causes Court in Revision Application, the plaintiff admitted that the

contractual rent is Rs.147/-. She submitted that the impugned orders are liable to be set aside.

4. On the other hand, Mr.Vyas supported the impugned orders. He submitted that the defendant is in possession of shops No.2 to 7.He submitted that the plaintiff has paid property taxes to the Corporation upto 31.3.2018, lease rent to BPT upto 31.3.2018 and repair cess upto 2016. He invited my attention to the findings recorded by the learned trial Judge in paragraphs-10 and 11 and submitted that the defendant did not adduce any material save and except denying the claim of the plaintiff. As against this, the plaintiff had produced on record the break-up of the liability of the defendant.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The plaintiff has paid the property taxes to the Corporation upto 31.3.2018, lease rent to BPT upto 31.3.2018 and repair cess upto 2016. In paragraph-10, the learned trial Judge has considered the rates of taxation of different period provided by the Corporation vide Exhibits-C, D, E, F and G. The learned trial Judge observed that no material is produced by the defendant to disbelieve the breakup of the liability of the defendant. The defendant did not produce

any rent receipt to show that nothing is due towards rent and permitted increases against him.

6. For the reasons recorded in paragraphs-10 and 11 of the trial Court's order coupled with the fact that the plaintiff has paid the property taxes, lease rent as also repair cess charges, as indicated hereinabove, no case is made out for interfering with the impugned orders. Hence, the Petition fails and the same is dismissed.

7. At this stage, Ms.Dandekar prays for extension of six weeks' time to comply the impugned orders. As and by way of indulgence, six weeks' time is granted to the petitioner to comply the impugned orders. Order accordingly.

(R. G. KETKAR, J.)