

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3034 OF 2017

Lalitaben Amritlal Mistry	]	
(since deceased)	]	
Mahen Amritlal Mistry and Anr.	]	Petitioners

Vs.

Ashok Bapusaheb Mane & Anr.	]	Respondents
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Mr. Shriram S. Redij, for the Petitioners.

Mr. Suhas A. Inamdar, for the Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 16TH MARCH, 2018.

P.C.

Heard Mr. Redij, learned Counsel for the petitioners and Mr. Inamdar, learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 25th January, 2017 passed by the Appellate Bench of Small Causes Court at Mumbai below Exhibit 6 in Appeal No.308 of 2016. By that order, the Appellate Court stayed execution of the decree dated 27th April, 2016 passed by the learned trial Judge in R.A.E Suit No.501-A/755 of 2010 subject to conditions of petitioners depositing arrears of interim compensation @ Rs.30,000/- per month towards use and occupation

of the suit premises from April, 2016 to January 2017 within a period of 30 days from the date of the order and continue to deposit interim monthly compensation @ Rs.30,000/- per month pending the hearing and final disposal of the appeal for ensuing months or or before 10th day of each succeeding month. Petitioners are directed to deposit arrears of rent @ Rs. 585.64 paise per month from April, 2016 to December, 2016 within a period of fifteen days from the date of the order and the petitioners shall continue to deposit rent @ Rs. 585.64 paise per month for every succeeding month on or before 10th day of each succeeding month. The respondents are permitted to withdraw the arrears of rent, if deposited by the petitioners.

3. Mr. Redij invited my attention to paragraphs 2 and 9 of the plaint where respondents/plaintiffs have contended that the petitioners are in possession of premises admeasuring 20'x60' and 15'x20' square feet, total admeasuring 1500 square feet area, out of total area of the plot admeasuring 2400 square feet of plot No. 15. In the written statement, defendants No.1 to 3 contended that they are in possession of 1000 square feet right from inception of tenancy. Defendants denied that they are in possession of 1500 square feet. He submitted that though area of the suit premises was in dispute, no issue was framed by the learned trial Judge. He has taken me though oral evidence of the parties in support of his contention that area of the suit premises is 1000 square feet approximately and not 1500 square feet.

4. On the other hand, Mr. Inamdar supported the impugned order. He submitted that Architect examined by the defendants in his cross-examination admitted that loft area admeasuring 377 square

feet is not included in the area of the suit premises. He, therefore, submitted that if area of loft admeasuring 377 square is included then it cannot be said that the defendants are tenants in respect of approximately 1000 square feet.

5. Mr. Redij submitted that the Appellate Court has not dealt with whether area of the suit premises is 1000 square feet as contended by the defendants or 1500 square feet as contended by the plaintiffs. He submits that the petitioners will file Review Petition within two weeks from today and if Review Petition is filed within two weeks, the Appellate Court may be directed to dispose of Review Petition on merits and not to reject the Review Petition on the ground that it is barred by limitation. He submitted that all the contentions of the petitioners namely on the question whether suit premises is admeasuring 1000 square feet or 1500 square feet and whether facilities are provided to the suit premises be kept open. He further states that on or before 30th April, 2018, petitioners will deposit arrears of interim compensation @ R. 30,000/- per month before the Appellate Court under intimation in writing to the learned Advocate for the respondents.

6. In view thereof, the Petition is allowed to be withdrawn with liberty to file Review Petition. The Petition is disposed of as such. If the Review Petition is filed within two weeks from today, the Appellate Court shall not reject the Review Petition on the ground of limitation and shall dispose of Review Petition on merits within 8 weeks.

7. All the contentions of the parties on merits in Review Petition are expressly kept open. If within two weeks from today,

Review Petition is not filed, the Appellate Court will consider the issue of limitation also.

8. The petitioners shall deposit arrears of compensation @ Rs. 30,000/- per month as per the impugned order or on before 30th April, 2018 and will go on depositing interim monthly compensation as per clause (2) of the operative part of the impugned order. The Appellate Court is requested to dispose of the Review Petition within 8 weeks from production of the authenticated copy of this order. If on or before 30th April, 2018, the petitioners do not deposit arrears of compensation, the application for stay shall stand rejected without further reference of the Court.

9. All the parties including the Appellate Court to act upon authenticated copy of this order.

[R.G. KETKAR, J.]