

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3124 OF 2018

Darshana Santosh Naik | Petitioner

Vs.

Ritesh Navin Nisar] Respondent

Mr. Sandeep Mishra for Petitioner.
Mr Sudhir Hardikar, for Respondent.

• • • • •

CORAM : R.G. KETKAR, J.

DATE : 14TH MARCH, 2018.

P.C.

Heard Mr. Mishra, learned Counsel for the petitioner and Mr. Hardikar, learned Counsel for the respondent at length.

2. Rule. Mr. Hardikar waives service on behalf of the respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 7th March, 2018 passed by the learned Ad-hoc District Judge-3, Thane in Misc. Application No.58 of 2018. By that order, the learned Ad-hoc District Judge dismissed the application taken out by the petitioner for

extension of stay granted on 7th February, 2018.

4. Learned Ad-hoc District Judge while rejecting the application observed that Regular Civil Appeal No.103 of 2015 was dismissed in default on 22nd December, 2017. The petitioner took out application for restoration. By order dated 22nd February, 2018, status-quo was extended by the learned Ad-hoc District Judge-7. The status-quo was extended with undertaking that main application would be argued by the petitioner. However, learned Counsel appearing for the petitioner left the application with Bench Clerk and went away. Though the matter was repeatedly called out, neither the petitioner nor his Advocate were present. The learned District Judge accordingly rejected the application, thereby, refusing to extend status-quo granted by order dated 22nd February, 2018.

5. Mr. Mishra states that the petitioner is present in the Court. He has tendered photo copy of her Adhaar Card which is taken on record and marked 'X' for identification. Upon taking instructions from her, Mr. Mishra states that the petitioner is in arrears of compensation @ Rs.12,000/- per month from October, 2016 till February, 2018. The total arrears of compensation as on 28th February, 2018 comes to Rs. 2,04,000/-. Mr. Hardikar has not disputed this fact. Mr. Mishra further states that the petitioner is in possession of the suit premises. The petitioner has neither created third party interest nor parted with possession and hereafter will neither create third party interest nor part with possession. Statements made on instructions are recorded.

6. Mr. Mishra states that within two weeks from today, he will

deposit Rs. 1,56,000/- in the trial Court under intimation in writing to the learned Counsel for the respondent and remaining amount of Rs. 48,000/- in the trial Court within four weeks from today under intimation in writing to the learned Counsel for the respondent and will not seek extension of time for such deposit. If such amount is deposited, the respondent is permitted to withdraw the same unconditionally.

7. In view thereof, impugned order dated 7th March, 2018 is set aside and Regular Civil Appeal No.103 of 2015 is restored with interim order to the file of the Appellate Court. The learned District Judge is requested to dispose of the Appeal within six weeks from the date of production of an authenticated copy of this order. As the respondent has incurred expenses for this litigation, the petitioner shall deposit Rs. 10,000/- towards costs in the trial Court within two weeks from today under intimation in writing to the learned Counsel for the respondent. Respondent is permitted to withdraw that cost unconditionally.

8. It is made clear that in case the petitioner does not deposit Rs.1,56,000/- within two weeks from today and remaining amount Rs. 48,000/- within four weeks in the trial Court, the appeal shall stand dismissed without further reference to the Court. In case, the petitioner does not deposit costs of Rs.10,000/- in the trial Court within two weeks from today, the impugned order shall stand revived without further reference of the Court. Rule is made absolute accordingly. It is made clear that I have not expressed any opinion on the merits of the case. All the contentions of the parties are expressly kept open.

9. All concerned parties, including the the District Court, to act upon an authenticated copy of this order. Order accordingly.

[R.G. KETKAR, J.]