

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.13957 OF 2016**

Ajit Maneklal Chokshi] Petitioner

Vs.

M/s. Excelsior Industrial & General]

Company Pvt. Ltd & Ors.] Respondents

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Mr. S.M. Mungale, for Petitioner.

Mr. S.R. Bhalekar, for Respondents No.1 and 2A.

Mr. Shriniwas Bobde i/b Jayesh G. Gawde, for Respondent No.5.

Ms. Radhika Vyas, i/b AAK Legal, for Respondent No.6.

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CORAM : R.G. KETKAR, J.

DATE : 22ND MARCH, 2018.

P.C.

Heard Mr. Mungale, learned Counsel for the petitioner, Mr. Bhalekar, learned Counsel for respondents No.1 and 2A, Mr. Bobde, learned Counsel for respondent No.5 and Ms. Vyas, learned Counsel for respondent No.6 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as “plaintiff” (respondent No.1 in Appeal) has challenged the order dated 3rd February, 2016 passed by the Appellate Bench of Small Causes Court Mumbai below Exhibit 6 in Appeal No.401 of

2015. By that order, the Appellate Court allowed the application Exhibit 6 made by the defendants No.1 and 2(a) to 2(c) and stayed execution and operation of the judgment and decree dated 13th August, 2015 passed by the learned Judge, Court No.20 of Court of Small Causes at Mumbai in R.A.D. Suit No.865 of 2002.

3. In support of this Petition, Mr. Mungale invited my attention to the plaint and in particular paragraphs 1 and 2 as also prayer clause (a). He also invited my attention to the agreement dated 26th April, 1972 executed between defendant No.1 Messrs. Excelsior Industrial & General Company Private Limited on one part and plaintiff on the other in respect of office on the third floor at Dadiseth House 44, Cawasji Patel Street, Fort, Mumbai-400 001. He submitted that Office No.23 is divided in three parts; 23-A, 23-B and 23-C as is evident from the map prepared by respondents No.3 to 6. He submitted that as also the fact that separate electricity meter in respect of Office No. 23-B stands in the name of the plaintiff. He also invited my attention to the receipts of payments made by the plaintiff from time to time. He submitted that by order dated 13th August, 2015, the learned trial Judge decreed the suit and declared that the plaintiff is lawful tenant of Office No.23-B on the third floor of Dadiseth House. The trial Court also directed to defendants No. 3 to 6 to hand over possession of the suit premises to the plaintiff in the newly constructed building. He submitted that defendants No.3 to 6 have not preferred Appeal against the trial Court's decree. In the appeal preferred by defendants No.1 and 2(a) to 2(c), there is no direction against them to hand over possession. The Appellate Court was, therefore, not justified in staying execution and operation of the trial Court's decree at the instance of defendants No.1 and 2(a) to 2(c).

4. On the other hand, Mr. Bhalekar submitted that if stay is vacated,

Appeal No.401 of 2015 filed by defendants No.1 and 2(a) to 2(c) will render infructuous. He submitted that a perusal of the leave and licence agreement shows that what was given on licence to the plaintiff was only the sitting accommodation and other facilities for having plaintiffs office in the portion of Office No.23. In other words, he submitted that the plaintiff was not given premises less than a room by defendant No.1.

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. With the assistance of learned Counsel for the parties, I have perused the trial Court's judgment. On perusal of the trial Court's judgment, *prima facie*, the learned trial Judge while declaring the plaintiff as tenant in respect of Office No.23-B has not recorded a finding that the plaintiff is in possession of premises which is not less than a room. In view thereof, question is whether the plaintiff is entitled to benefit of section 15-A of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947. As the trial Court has not *prima facie* recorded a finding under section 15-A of the Act, it cannot be said that the Appellate Court committed error in staying the decree passed by the trial Court. Mr. Mungale submitted that the petitioner is a senior citizen, as on today is bedridden and out of the premises since 2001, the Appellate Court be directed to dispose of the appeal in a time bound manner.

6. In view thereof, no case is made out. Hence, the Petition fails and the same is dismissed with no order as to costs. The Appellate Court is requested to decide Appeal No.401 of 2015 as expeditiously as possible and in any case, within three months from the date of production of an authenticated copy of this order. The Appellate Court will decide the Appeal un-influenced by the observations made in this order. All the contentions of the parties are expressly kept open.

7. All the parties including the Appellate Court to act on an authenticated copy of this order.

[R.G. KETKAR, J.]