

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.9365 OF 2018

Masood Ahmed Mohd. Usaman	]	Petitioner
Vs.		
Mujib Ahmed Mohd. Mustafa & Ors.	]	Respondents
.....		
Mr. Sandeep R. Waghmare, for Petitioner.		
....		

CORAM : R.G. KETKAR, J.

DATE : 29TH AUGUST, 2018.

P.C.

Not on board. At the request of Mr. Waghmare, taken up for admission.

2. Heard Mr. Waghmare, learned Counsel for the petitioner.

3. By this Petition under Article 227 of the Constitution of India, the petitioner/defendant has challenged the order dated 24th April, 2018 passed by the learned District Judge, Malegaon below Exhibit 5 in Civil Appeal No.25 of 2018. The respondents have instituted R.C.S No.275 of 2018 against the petitioner/defendant for recovery of arrears of rent and possession. By order dated 14th December, 2017, the learned trial Judge decreed the suit and directed the defendant to pay amount of Rs.13,000/- towards arrears of rent from 1st April, 2010 to 30th April, 2011 along with simple interest @ 6% per annum till the date of recovery of possession.

4. Aggrieved by this decision, the defendant instituted Appeal. Pending appeal, he took out application Exhibit 5 under Order-XLI, Rule-5 of

the Code of Civil Procedure, 1908 (for short 'C.P.C') for stay of eviction decree. By the impugned order, the learned District Judge allowed the application and stayed eviction decree subject to following terms and conditions;

- “a) The appellant is directed to deposit the arrears of rent as ordered by the trial Court.
- b) The appellant is also directed to deposit rent at the rate of Rs. 1000/- per month from passing of decree till the decision of appeal.
- c) The respondent is at liberty to withdraw the amount as and when deposited”.

Mr. Waghmare has challenged clause (c) extracted hereinabove, whereby the plaintiffs are permitted to withdraw the amount as and when deposited by the defendant.

5. In support of this Petition, Mr. Waghmare has raised following contentions;

- [1] Agreement dated 7th March, 2009 does not bear signature of the defendant. The stamp paper is also not purchased in name of any of the plaintiffs. Even the agreement is executed on insufficient stamp paper. In other words, the agreement is not admissible in evidence.
- [2] The plaintiffs are not owners of the suit premises and in fact, the defendant is owner.

He has taken me through the discussion of the trial Court on Issue No.1 in support of contention that the plaintiffs are not owners. He submitted that the defendant is ready and willing to deposit arrears of rent @ Rs. 1000/- per month till decision of the appeal. During pendency of the appeal, the plaintiffs may not be permitted to withdraw the amount so deposited by the defendant.

6. I have considered submissions advanced by Mr. Waghmare. I have also perused the order passed by the trial Court. The learned trial Judge has discussed the agreement dated 7th March, 2009 in paragraph 38. After considering the evidence on record, the learned trial Judge held that the plaintiffs have proved contents of the agreement at Exhibit 22. In so far as contention of the defendant that he is owner of the suit premises that issue is considered at length from paragraphs 15 to 22 and after considering the evidence on record, the learned trial Judge held that the plaintiffs are owners of the suit property. The learned trial Judge accordingly decreed the suit. While considering the application under Order-XLI, Rule-5, the District Court has to proceed on the footing that the findings recorded by the learned trial Judge after full-fledged trial are *prima facie* correct and on that basis, impose conditions while granting stay. It is in that context, the learned District Judge directed the defendant to deposit arrears of rent as ordered by the trial Court as also go on depositing rent @ Rs.1000/- per month from the date of passing of the decree till decision of the appeal. As the defendant was in arrears of rent, the learned District Judge permitted the plaintiffs to withdraw the amount as and when so deposited.

7. In view thereof, I do not find that the learned District Judge has committed any error in permitting the plaintiffs to withdraw the amount of rent to be deposited by the defendant @ Rs. 1000/- per month. It is, however, made clear that in case, the defendant succeeds in appeal, the District Judge will order refund of the amount withdrawn by the plaintiffs within such time along with interest at such rate as may be determined. Subject to this, Petition fails and the same is dismissed. The learned District Judge will decide the appeal un-influenced by the observations made herein.

[R.G. KETKAR, J.]