

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7892 OF 2018

Ms. Shabnam Shaikh

...Petitioner

Versus

Mrs. Saira Anwar Sayed

...Respondent

....

Mr. Manoj P. Mhatre, Advocate for the Petitioner.

Mr. Ashutosh Gavnekar i/b. Neelam Morey, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 25th SEPTEMBER, 2018

P.C.

1. Heard Mr. Manoj P. Mhatre, learned counsel for the petitioner and Mr. Ashutosh Gavnekar, learned counsel for the respondent.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has prayed for restoration of the possession of garage No.1 admeasuring 326 sq. ft. carpet area on the ground floor in the building known as "Diego" situate at CTS Nos.C/1247, C/1280, C/1461 and C/1463 at village Sherly, Sherly Rajan Road, Off. Carter Road, Bandra (W), Mumbai – 400 050 (for short, 'suit premises') as it was on the date of filing of the Revision Application by the petitioner on 13.7.2018.

3. Mr. Mhatre submitted that by order dated 23.5.2018 the Competent Authority (Rent Act), Konkan Division, Mumbai (for short, 'Competent Authority') allowed the application made by the respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act') on the ground that though the petitioner herein was duly served and appeared through Advocate, she did not file an application for leave to defend. Mr. Mhatre submitted that in fact the summons of the proceedings under Section 24 of the Act were neither served on the petitioner nor she engaged Advocate. The petitioner also was not present on 4.4.2018. However, in paragraph-4 of the order dated 4.4.2018 of the Competent Authority it was recorded that the Advocate for the petitioner herein was present. In paragraph-6, the Competent Authority also recorded a finding that the summons were duly served upon the petitioner herein and despite that she failed and neglected to appear before the Competent Authority. Her Advocate appeared only once during the course of proceedings.

4. Aggrieved by this decision, the petitioner has instituted Revision Application within the prescribed period of limitation on 13.7.2018 and the same is pending. He submits that the respondent has taken possession of the suit premises and that the Petition may be disposed of by giving liberty to the petitioner to apply for interim relief restraining the respondent herein from creating third party interest or parting with the

possession.

5. On the other hand, Mr. Gavnekar submitted that by order dated 24.7.2018, R & P was called for and in the meantime the petitioner was asked to deposit Rs.4,20,000/- in this Court within two weeks. The petitioner has not complied that order by depositing Rs.4,20,000/-. Mr. Mhatre submits that though he repeatedly instructed the petitioner to comply the order, she has not complied that order.

6. In view thereof, no case is made out for granting any relief in the present proceedings inasmuch as the petitioner has already filed Revision Application under Section 44 of the Act. It will be open to the petitioner to apply for interim relief restraining the respondent from creating third party interest or parting with the possession. It will be also open to the respondent herein to agitate the non-compliance of the order dated 24.7.2018 passed by this Court directing the petitioner to deposit Rs.4,20,000/- in this Court. Accordingly the petition is disposed of. All contentions of the parties on merits are kept open. R & P shall be transmitted to the office of the Commissioner, forthwith. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)