

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.9190 OF 2018

M/s. Thakorlal & Co.	]	Petitioner
Vs.		
Lala Storage Company	]	Respondent

.....

Mr. Durgesh Kulkarni i/b Mr. G.T. Mestha, for Petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 16TH AUGUST, 2018.

P.C.

Heard Mr. Kulkarni, learned Counsel for the petitioner at length.

2. This Petition takes exception to the order dated 27th March, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai below Exhibit 6 in Appeal No.305 of 2017. By that order, the Appellate Court allowed the application filed by the petitioner/appellant, hereinafter referred to as 'defendant' under Order-XLI, Rule-5 of the Code of Civil Procedure, 1908 (for short 'C.P.C'). By that order, the Appellate Court stayed eviction decree dated 11th November, 2016 passed by the learned trial Judge in R.A.E. Suit No.1460/2270 of 2010 subject to conditions which are to the following effect;

“[3] The stay shall be subject to the condition that Appellant/original Defendant shall pay and continue to deposit the sum of Rs.40,000/- (Rupees Forty Thousand only) per month from the date of decree i.e from 11.11.2016 as compensation for the use and occupation of the suit premises during the pendency of the present Appeal.

- [4] Appellant/Defendant do deposit the arrears of compensation either in lump sum or in 03 (three) equal monthly installments from today i.e 27.03.2018 payable on or before 05th day of each calender month.
- [5] On such deposit being made the office of Court of Small Causes, Mumbai shall invest the amount in Fixed Deposit of 01 (one) year extendable thereafter on yearly basis till further order.
- [6] Appellant/Defendant shall not part with possession of the suit premises or to create any third party interest in respect of the suit premises during the pendency of this appeal.”

3. After arguing the Petition for quite some time, Mr. Kulkarni, on taking instructions from Mr. Jignesh Shah, partner of the petitioner/Firm seeks permission to withdraw this Petition with a liberty to file Review Petition before the Appellate Court. He has tendered photo copy of his Driving Licence, which is taken on record and marked 'A' for identification. Mr. Kulkarni assures that within 4 weeks from today, the petitioner will deposit arrears of compensation in the Court of Small Causes at Mumbai and will not seek further extension for depositing arrears as per the impugned order. The petitioner will file Petition in the Appellate Court seeking review of the impugned order within 4 weeks from today.

4. Mr. Kulkarni submits that in case, the petitioner will file Review Petition within 4 weeks from today, the Appellate Court to decide the same on its own merits and shall not dismiss the same on the ground of limitation.

5. In view thereof, on the motion made by Mr. Kulkarni, Petition is allowed to be withdrawn with a liberty as prayed for and is disposed of as such. The petitioner shall

deposit arrears of compensation @ Rs. 40,000/- per month as per the impugned order within 4 weeks from today in the Small Causes Court at Mumbai and shall not seek further extension of time for depositing the arrears. The petitioner shall file Review Petition within 4 weeks from today seeking review of the impugned order. If such application is filed within 4 weeks from today, the Appellate Court shall decide the same on its own merits and shall not dismiss the same on the ground of limitation. All contentions of the parties on merits are expressly kept open. Order accordingly.

[R.G. KETKAR, J.]