

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.9306 OF 2018

Nikhilesh Amratlal Shah	]	Petitioner
Vs.		
Bhushan Sagarmalji Punamia	]	Respondent

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Ms. E.A. Gonsalves a/w R. Gonsalves, for the Petitioner.
Ms. Vimla R. Vora, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 26th SEPTEMBER, 2018.

P.C:

Heard Ms. Gonsalves, learned Counsel for the petitioner and Ms. Vora, Learned Counsel for the respondent.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as “plaintiff” has challenged the judgment and order dated 23rd July, 2018 passed by the learned trial Judge, Court Room No.40 of the Court of Small Causes at Mumbai (Bandra Branch) below Exhibit 19 in L.E. Suit No.87 of 2015. By that order, the learned trial Judge rejected the application filed by the plaintiff under Order-XV-A of the Code of Civil Procedure, 1908 (for short 'C.P.C') for directing the respondent, hereinafter referred to as “defendant” to pay compensation @ Rs.10,400/- per month.

3. Rule. Ms. Vora waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Ms. Gonsalves submitted that the defendant in his written statement as also in reply has not disputed that the monthly compensation is Rs. 10,400/-. She submitted that the defendant only contended that amount of Rs.10,400/- is not towards 'compensation' but is actually 'rent'. The defendant has instituted suit for declaration of tenancy rights. Thus, the only contention raised by the defendant is Rs.10,400/- per month is towards 'rent' and not 'compensation'. Despite, the defendant admitting quantum, the learned trial Judge dismissed the application. The learned trial Judge could have very well directed the defendant to deposit the amount @ Rs.10,400/- per month without prejudice to the rights and contentions of the parties in the pending proceedings.

5. On the other hand, Ms. Vora supported the impugned order. She submitted that the amount of Rs.10,400/- is inclusive of electricity charges. She invited my attention to paragraph 7 of the written statement where the defendant contended that he had paid rent to the plaintiff @ Rs.10,400/- by cheque dated 9th August, 2014 for the month of July, 2014. She submitted that the defendant is ready and willing to deposit amount @ Rs.10,400/- which includes electricity charges. In any case, if the Court is inclined to direct the defendant to deposit amount @ Rs.10,400/- , 20 installments may be given for clearing arrears for the period from August, 2014 till 30th September, 2018 along with Rs.10,400/- per month payable from 1st October, 2018.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Normally, I would have relegated the petitioner to file Revision Application against the impugned order in view of the decision of this Court in the case of **Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd @ Sahakar Bhandar Vs. Kusumben Kantilal Shah, 2004 (4) Bom. C.R. 547**

wherein it is held that the order passed under Order-XV-A of the C.P.C affects substantive rights. I declined to relegate the petitioner to avail remedy of revision as in the instant case, the defendant has contended that he is paying rent to the plaintiff @ Rs.10,400/- per month. As there is no dispute as regards quantum, I have heard the learned Counsel for the parties at length.

7. A perusal of the written statement filed by the defendant and in particular paragraph 6 shows that the defendant contended that since inception of tenancy he has been paying monthly electricity charges to Reliance Energy. *Prima facie*, no plea is taken either in the written statement or reply to the effect that Rs.10,400/- is inclusive of electricity charges. In paragraph 7 of the written statement, it is contended that he has paid rent for the month of July, 2014 @ Rs.10,400/-. This payment, *prima facie*, does not include electricity charges. Only dispute between the parties is that the plaintiff is claiming compensation @ Rs.10,400/- per month. The defendant is ready to pay that amount as a rent. As mentioned earlier, the defendant has already instituted suit for declaration of his tenancy rights. The suit instituted by the plaintiff and the suit instituted by the defendant are pending.

8. In view thereof, without going into the question whether Rs.10,400/- is towards “compensation” as claimed by the plaintiff or “rent” as claimed by the defendant, in my opinion, the learned trial Judge should have directed the defendant to pay to the plaintiff @ Rs.10,400/- per month from August, 2014 onwards. Ms. Gonsalves submits that the defendant has not paid any amount to the plaintiff and the arrears @ Rs.10,400/- from August, 2014 till 30th September, 2018 comes to Rs. 5,20,000/-. Ms. Vora submitted that the defendant will pay this arrears along with monthly compensation @ Rs.10,400/- in 20 installments. It is not possible to accept request made by the defendant. In paragraph 10 of the reply dated 17th March, 2018 the defendant

has expressed readiness and willingness to pay arrears by way of 8 installments.

9. In view thereof, Petition is disposed of in the following terms;
- [1] Impugned order is set aside and application Exhibit 19 is allowed.
 - [2] The defendant shall clear arrears @ Rs.10,400/- per month from August, 2014 till 30th September, 2018 by paying amount in 8 equal installments commencing from October, 2018.
 - [3] The defendant shall pay amount @ Rs.10,400/- per month from 1st October, 2018 onwards on or before 10th day of the next succeeding month/s. Arrears shall be paid along with monthly amount of Rs.10,400/-.
 - [4] Amount of Rs.10,400/- shall be exclusive of electricity charges.
 - [5] Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]