

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition NO. 11446 OF 2018**

Kalpeshkumar Parmanand Dave

...Petitioner

*Versus*

M/s. Ish Homes Pvt. Ltd.

...Respondent

....

Mr. Tanvir Shaikh, Advocate for the Petitioner.

Mr. Khan Javed Akhtar, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 15<sup>th</sup> OCTOBER, 2018

P.C.

1. Heard Mr.Tanvir Shaikh, learned counsel for the petitioner and Mr.Khan Javed Akhtar, learned counsel for the respondent, at length.
2. Mr.Khan Javed Akhtar assures that during the course of the day, he will file appearance on behalf of the respondent.
3. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'applicant', has challenged the order dated 21.09.2018 passed by the learned trial Judge below Exhibit-29. By that order, the learned trial Judge set aside the order dated 16.03.2018 and fixed the matter on 10.10.2018 so as to enable the respondent to file his evidence.
4. Mr. Shaikh submitted that on 9.12.2016 applicant filed application Exhibit-25 in the trial Court for closing evidence of the

respondent. On 16.2.2017, the respondent filed application Exhibit-26 *inter alia* contending that he has filed evidence on 16.02.2017, and therefore, requested to take affidavit of evidence on record. On 22.02.2018, the applicant filed reply requesting the trial Court to decide his application Exhibit-25 first before deciding application Exhibit-26. The applicant further prayed for dismissal of application Exhibit-26. By order dated 22.02.2018 below Exhibit-26, the learned trial Judge allowed that application of the respondent subject to payment of costs of Rs.1,000/- to the applicant before the next date and made it clear that on his failure, necessary order will be passed on application below Exhibit-25. On 16.03.2018, the learned trial Judge passed order below Exhibit-25 to the effect that respondent neither complied order dated 22.02.2018 by depositing Rs.1,000/- towards costs nor filed his evidence. The evidence of the respondent was accordingly closed. Thereafter, respondent filed application on 10.04.2018 at Exhibit-27 for setting aside no cross order. By order dated 23.04.2018, the learned trial Judge rejected application Exhibit-27. It is only thereafter, the respondent filed application Exhibit-29 on 21.09.2018. By order dated 21.09.2018, the learned trial Judge has set aside no-cross order dated 16.03.2018 passed below Exhibit-25.

5. On the other hand, Mr. Khan submitted that on 16.2.2017, the respondent filed application Exhibit-26 requesting the Court to take affidavit of evidence on record. By order dated 22.2.2018, the learned trial Judge

allowed that application subject to payment of costs of Rs.1,000/-. The order of payment or deposit of costs of Rs.1,000/- was to be implemented on or before the next date. On failure, the learned trial Judge made it clear that necessary orders will be passed on Exhibit-25. Application Exhibit-25 was taken out by the applicant on 9.12.2016 for closing the evidence of the respondent. As the respondent did not pay or deposit the costs of Rs.1,000/- before the next date of hearing, the learned trial Judge passed order on 16.3.2018 closing the evidence. He submitted that the respondent will extend full cooperation for deciding the standard rent application and will not seek undue adjournment. He further submitted that the reasonable cost in addition to the costs imposed by the trial Court may be imposed on the respondent for not complying the order dated 22.2.2018.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of application dated 9.2.2016 at Exhibit-25 shows that the petitioner contended that the cross-examination of the petitioner was over on 6.7.2015. The matter was adjourned to 10.7.2015 for filing evidence by the respondent. Till 9.12.2016, the respondent did not file affidavit of evidence. The petitioner, therefore, filed application Exhibit-25 on 9.12.2016 for closing respondent's evidence. It is not in dispute that application Exhibit-25 was not decided. Pending that application, the respondent filed

application Exhibit-26 on 16.2.2017 along with affidavit of evidence. The petitioner filed reply on the same day requesting the trial Court to decide his application Exhibit-25 first before deciding application Exhibit-26.

7. By order dated 22.2.2018, the learned trial Judge allowed the application filed by the respondent at Exhibit-26 subject to payment of costs of Rs.1,000/-. The learned trial Judge made it clear that the costs shall be deposited or paid before the next date of hearing and failure to do so will entail in passing necessary orders on Exhibit-25. As the respondent failed to comply the order dated 22.2.2018, by order dated 16.3.2018 below Exhibit-25, the learned trial Judge closed the evidence of the respondent. The respondent thereafter filed application Exhibit-29 on 21.9.2018 for setting aside the order dated 16.3.2018 and taking on record affidavit filed by the respondent/plaintiff on 16.2.2017. By the impugned order, the learned trial Judge has set aside the order dated 16.3.2018 by which the respondent's evidence was closed. The reason given by the learned trial Judge is "to meet the ends of justice". Mr. Shaikh submitted that by cryptic order, the learned trial Judge has allowed the application.

8. A perusal of the record indicates that on account of failure of the respondent to pay costs of Rs.1,000/-, the learned trial Judge has closed his evidence. In my opinion, instead of closing the evidence, the learned trial Judge should have imposed exemplary costs on the respondent for not

complying the order dated 22.2.2018.

9. By not permitting the respondent to adduce evidence, the respondent will be precluded from substantiating his claim in standard rent application. In view thereof, I do not find that any case is made out for interfering with the impugned order subject to the respondent paying further costs of Rs.5,000/- in addition to Rs.1,000/- imposed by the learned trial Judge. In other words, the respondent will now deposit the costs of Rs.6,000/- in this Court within one week from today, under intimation in writing to the learned Counsel for the petitioner. Upon such deposit of costs, the petitioner is permitted to withdraw that amount unconditionally. Petition is accordingly dismissed.

10. List the Petition for reporting compliance 23.10.2018. It is made clear that in case the respondent does not deposit Rs.6,000/- in this Court within one week from today, the order dated 16.3.2018 below Exhibit-25 shall stand revived without further reference to the Court. Order accordingly.

(R. G. KETKAR, J.)