

Mr. Vishal Kanade a/w. Mr. Mitesh Naik i/b. M/s. Dhru & Co. for
Petitioner.
Mr. P. S. Dani, Senior Advocate a/w. Mr. Ashutosh Kulkarni i/b.
Mr. Sarthak Diwan for Respondents.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 16.04.2016 passed by the learned 2nd Additional Judge, Small Causes Court, Pune below exhibits 15 and 36 in Civil Suit No.490 of 2012 as also the judgment and order dated 26.10.2016 passed by the learned District Judge-16, Pune in Civil Revision No.26 of 2016. By these orders, the Courts below allowed applications exhibits-15 and 16 filed by the respondents, hereinafter referred to as 'plaintiffs', and directed the petitioner, hereinafter referred to as 'defendant', to deposit the rent of Rs.3,64,65,829/- due as on 05.02.2015 by adjusting the amount already deposited by installment of Rs.4,91,000/- every month till date.

3. Rule. Mr. Diwan waives service for respondents. Having regard to controversy raised in this Petition and by consent of parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. During the pendency of the Petition, measurements were carried out by Deputy Engineer, Building Department, Pune Municipal Corporation and summary of floor-wise carpet area was placed on record along with the report. Plaintiffs and defendant have filed objections to the report submitted by the Engineer of Corporation.

5. It is common ground between the parties that there is no dispute in so far as first and second phase is concerned. There is dispute as regards third phase and fifth floor. It is the case of the plaintiffs that defendant is in possession of third phase from 01.07.2010 and he is in possession of fifth floor from 01.04.2013. As against this, in paragraph 17 of Miscellaneous Application No.55 of 2013 filed by the defendant under Section 8 of the Maharashtra Rent Control Act, 1999 (for short 'Act'), they claim to have taken possession of the third phase of the said building on 01.04.2013 on as is where is basis. There is also dispute as regards payment of rent in respect of stilt portion as also terrace area. Mr. Kanade relied upon clauses 2 and 3(d) of the lease deed dated 04.02.2010.

6. Mr. Dani relied upon clause 15 of the lease deed dated 04.02.2010 where the defendant has agreed to take possession of extra carpet area on the fifth floor of the constructed building from the date to be specified by the plaintiffs. Mr. Dani submitted that in the written statement, defendant asserted that possession of the fifth floor was taken by them on 01.04.2013 as per option given in the terms of the lease deed. He, therefore, submitted that the defendant is liable to pay compensation in respect of the fifth floor from 01.04.2013.

7. Mr. Kanade submitted that in view of clause 2 of the lease deed, defendant is not liable to pay rent for the stilt area. He submitted that

the Engineer from the Corporation has included carpet area of 4106.11 sq.ft. of stilt floor. If that area is deducted then the carper area comes to 36988.36 sq. ft. (41094.47 - 4106.11).

8. As noted earlier, plaintiffs are relying upon paragraph 10 of the written statement where defendant asserted that it has taken possession of fifth floor on 01.04.2013. During the course of hearing, the parties agreed for setting aside the impugned order and restoration of applications, exhibits-15 and 36 before the trial Court. They submitted that parties will adduce evidence in respect of the third phase whether it was given in possession of the defendant on 01.07.2010 as claimed by the plaintiffs or from 01.04.2013 on as is where is basis as claimed by the defendant; whether defendant is liable to pay compensation in respect of the stilt area and terrace as defendant claims exemption; and whether defendant is liable to pay compensation in respect of fifth floor area which plaintiffs say that defendant has taken possession from 01.04.2013;

9. Mr. Kanade submitted that the rent is payable from 01.04.2013 or two months from the date of actual possession, whichever is later. Learned Counsel for the parties, upon taking instructions from their respective parties, who are present in the Court, agree for setting aside the impugned order and submit that the parties will adduce evidence in respect of the above items.

10. Hence, by consent of the parties, Petition is disposed of in the following terms:

- a. Impugned orders are set aside and applications, exhibits-15 and 36 are restored to the file of the learned trial Judge;
- b. Petitioner-defendant shall deposit interim compensation in

respect of area admeasuring 36988.36 sq.ft. (41094.47 - 4106.11) from 01.06.2013 as per the contractual rent within four weeks from today in the trial Court;

c. Parties will lead evidence to substantiate their rival claims, namely,

(i) plaintiffs claim that defendant took possession of the third phase from 01.07.2010 and consequently, is liable to pay rent in respect of the third phase from 01.09.2010. As against this, defendant claims that it was put in possession of the third phase on as is where is basis from 01.04.2013 and therefore, is liable to pay interim compensation from 01.06.2013;

(ii) plaintiffs claim that defendant has taken possession of the fifth floor from 01.04.2013 and consequently, it is liable to pay interim compensation from 01.06.2013;

(iii) defendant claims that in terms of clauses 2 and 3 of lease deed dated 04.02.2010, they are not liable to pay rent for the stilt area, non-constructed area and terrace area;

d. All contentions of the parties on merits are kept open.

11. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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