

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13299 OF 2018

Pradeep Kumar Lalit Kumar Pandya ...Petitioner
vs.
Ruxmani Harisingh Kapadia and Ors. ...Respondents

Mr. Umesh Tawari a/w. Mr. Mranal Mandhane and Ms. Hetal Vithlani I/b. M/s. S. Ashwinikumar and Co., for the Petitioner.
Mr. Suraj Shah, for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 22, 2018

JUDGMENT

. Heard Mr. Umesh Tawari, learned counsel for the Petitioner and Mr. Suraj Shah, learned counsel for Respondent Nos. 1 and 2.

2. Mr. Tawari, learned counsel for the Petitioner states that the presence of Respondent Nos. 3 to 7 is not necessary for the purpose of deciding the issue which arises in this Petition. Accordingly, he seeks leave to delete them. Leave is granted. Necessary amendment to be carried out forthwith.

3. Rule.

4. Rule is made returnable forthwith with consent and request of learned counsel for the parties.

5. The challenge in this Petition is to the order dated 4th September, 2018 by which the Appeal Court has dismissed the application to deposit rents pending the Appeal No. 92 of 2014 in which the Petitioner challenged the judgment and decree made in RAD Suit No. 1958 of 2003.

6. Mr. Tawari submits that pending the suit, the Petitioner who is the original Plaintiff was permitted to deposit the rents. He submits that since the Appeal is nothing but continuation of the suit, the same order ought to have been continued. On this short ground, Mr. Tawari submits that the impugned order is liable to be set aside and the Petitioner's application at Exhibit 13 be made absolute.

7. Mr. Suraj Shah, learned counsel for Respondent Nos. 1 and 2 (Original Defendants-landlords) submits that consequence upon the decree in RAD Suit No. 1958 of 2003, it is quite clear that the Petitioner is not the tenant of Respondent Nos. 1 and 2. He submits that in such circumstance, the Petitioner's application, seeking leave to deposit rents was quite misconceived and was rightly rejected by the Appeal Court.

8. Mr. Shah points out that Respondent Nos. 1 and 2 have in fact taken out, an application at Exhibit 15 before the Appeal

Court in which they have prayed that direction be issued to the Petitioner to deposit the compensation equivalent to market rate in respect of the suit premises. He submits that if, the Petitioner's application (Exhibit 13) is to be allowed, the same might prejudice the determination of Exhibit 15 taken out by the Respondent Nos. 1 and 2.

9. The rival contentions now fall for determination.

10. In this case, even though, the Petitioner has applied for permission to deposit rents pending the Appeal, the nomenclature of "Rent" used by the Petitioner is neither conclusive nor determinative. If the permission as prayed for is granted, that would not mean that the Court has determined that the Petitioner is a tenant of the suit premises. Accordingly, based upon such apprehension, leave to deposit should not have been rejected. At the highest, the Appeal Court, should have clarified this position.

11. Accordingly, the impugned order is set aside and the Petitioner is granted leave to deposit the alleged rents before the Appeal Court.

12. It is clarified that merely because such leave is granted, the same ought not be construed as some sort of recognition that the Petitioner is indeed the tenant of the suit premises. That is a

matter which will have to be determined on merits after hearing contentions of both the parties. Therefore, though permission is now granted, the character of the amount to be deposited is clearly kept open.

13. Similarly, the application taken out by Respondent Nos. 1 and 2 seeking for deposit of compensation will also have to be considered on its own merits and in accordance with law without in any manner being influenced by the order now made allowing the Petitioner to deposit the alleged rent before the Appeal Court.

14. It is once again reiterated that all contentions of the parties as well as the character of deposit now permitted are kept open. However, the Appeal Court is directed to dispose of the Application (Exhibit 15) on its own merits without being influenced by the present order.

15. The aforesaid clarification and directions take care of the second apprehension expressed by Mr. Shah on behalf of Respondent Nos. 1 and 2.

16. Since the Appeal itself is of the year 2014, the hearing of the Appeal is also expedited. The Appeal Court to endeavour to dispose of the Appeal itself by 31st December, 2019.

17. Rule in the Petition is disposed of in the aforesaid

terms.

18. There shall however no order as to costs.

19. All concerned to act on the basis of authenticated copy
of this order.

(M. S. SONAK, J.)