

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14246 OF 2018

Dr. Prabodh P. Shenai .. Petitioner
vs.
Haridas B. Kakade .. Respondent

Dr. Prabodh Prakash Shenai, Petitioner in person present.

CORAM : M. S. SONAK, J.
DATE : 14 DECEMBER 2018.

P.C. :-

1] Heard Dr. Prakash Shenai, the petitioner in person. He states that he was granted permission to appear in person in previous matter and therefore, he should be allowed to appear in this matter. Without commenting upon legality of such submission, Dr. Prakash Shenai is heard in person.

2] He submits that he has paid rent/compensation at the rate of Rs.18,000/- per month upto 28th January 2016, which is the date on which he claims to have handed over the vacant possession of the suit premises to the respondent. He therefore, submits that the direction in the impugned order dated 15th November 2018 requiring the petitioner to deposit in the Court arrears of compensation at the rate of

Rs.36,000/- per month from 1st June 2014 till vacant possession of the suit premises was handed over to the respondent is illegal and warrants interference.

3] In this petition, the petitioner is challenging the order dated 15th January 2018 to the extent it requires the petitioner to make the aforesaid deposit.

4] The operative portion of the impugned order dated 15th November 2018 is reads thus:

“ ORDER

1] *The Applications Exhibits 56 and Exhibit 58 are rejected.*

2] *The plaintiff is directed to deposit into the court the arrears of compensation @ Rs.36,000/- per month from 01.06.2014 till the vacant possession of the suit premises was handed over to the defendant, within one month from today, failing which the suit shall be liable to be dismissed under Order XXXIX Rule 11 of Code of Civil Procedure”.*

5] In the impugned order, the learned Trial Court has referred to this Court's earlier order dated 19th March 2018 in Writ Petition No. 4930 of 2017. In paragraph 7, this is what this Court had observed thus:

“By separate order dated 07.10.2015, the Competent Authority allowed the application made by

the respondent under Section 24 of the Act and directed the petitioner to handover vacant and peaceful possession of the suit premises so also pay Rs.36,000/- per month from 01.06.2014 till the vacant possession of the suit premises was handed over to the respondent”.

6] There is nothing on record to indicate that the petitioner has indeed paid any rents at the rate of Rs.18,000/- per month or otherwise for the period between 1st June 2014 and the date on which the petitioner claims to have handed over the vacant possession of the suit premises to the respondent, i.e., 28th January 2016. In any case, the Trial Court, by the impugned order, has only directed the petitioner to deposit the arrears of compensation at the rate of Rs.36,000/- per month in the Court from 1st June 2014 till the date the vacant possession of the suit premises was handed over by him. This means that at least as yet there is no direction to pay this amount to the respondent.

7] Since, the petitioner claims that for this period he has already paid compensation at the rate of Rs.18,000/- per month through banking transactions, the learned Trial Court is requested to verify this position and if this position is found to be correct, then to give credit of such payments to

the petitioner. Needless to add that since the directions for payment at the rate of Rs.36,000/- per month, the balance amount will have to be paid by the petitioner.

8] The petitioner now raises contention that the the respondent is not at all the owner of the suit property. In a petition of this nature, such a submission is entirely misconceived and in fact it is required to be rejected by imposing costs. The only reason the costs are not imposed is because the petitioner is appearing in person and is possibly not well versed in law.

9] With the aforesaid clarification, this petition is dismissed.

10] The petitioner to place the authenticated copy of this order before the learned Trial Court on the next date of hearing which is on 17th December 2018.

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

(M. S. SONAK, J.)