

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13568 OF 2019

SHASHI KUMAR ROCHKARI ALIAS SESA KUMAR ROCHKARI
NARAYAN ROCHKARI
VERSUS
ARUNRAO GOPAL NAGESH TULJAPURKAR S/O GOPAL NAGESH

Mr.M.P.Kale, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 08/11/2019

PER COURT :

1. The petitioner/original defendant is aggrieved by the order dated 24/01/2019 passed by the Trial Court vide which application Exh.32 has been allowed and the following directions are issued in RCS No.92/2015 :-

"1. Application Exh.32 is allowed.

2. The defendant is directed to deposit an arrears of Rs.84,000/- monthly rent up to the February 2018 and also directed to deposit further monthly rent of Rs.2,000/- from March 2018 to December 2018.

3. The defendant is directed to deposit an arrears of Rs.84,000/- within the four months from today. The defendant is directed to deposit maximum arrears amount by each month within four month from today i.e. up to the 31st May 2019.

4. The defendant is directed to deposit arrears of further rent for the period of March 2018 to December 2018 on or before July 2019.

5. The defendant is directed to deposit further arrears of rent from January 2019 regularly after the month of July 2019.

6. The defendant and his counsel to take a note of this order that in the event of any default in making the deposits as afore said the defence will be strike off as per Order XV-A sub rule 1 and 2 of the Code of Civil Procedure.

Date : 24th January, 2019."

2. The contention of the petitioner is that the father of the plaintiff was the owner and possessor of the suit premises. After his death, the plaintiff became the owner and possessor. The premises were given on rent to the petitioner/defendant.

3. It was alleged in the suit by the plaintiff that the petitioner has defaulted in payment of rent amounts. A legal notice was issued on 12/08/2014 u/s 106 of the Transfer of Property Act. The amount of rent was increased to Rs.2,000/- per month from 01/11/2013.

4. The petitioner contends that he has spent about Rs.50,000/- in improving the suit property, which is the rented shop premises. The said amount needs to be adjusted against the rent payable. The

rent amount has been increased to Rs.2,000/- per month. The petitioner is willing to pay the rent regularly provided the amount spent on the construction of the rented premises is adjusted.

5. The learned Advocate for the petitioner has strenuously canvassed the 8 grounds formulated in the memo of the petition.

6. It appears from application Exh.32 filed by the plaintiff that he had sought orders from the Trial Court u/s XV-A (Bombay Amendment) of the CPC. If the arrears were not cleared, the plaintiff had sought an order of striking off the defence of the defendant.

7. The impugned order is an interlocutory order as regards non payment of rent. The record reveals that after the rent was increased to Rs.2,000/- w.e.f. 01/11/2013, the petitioner has started paying the said rent to the landlord. On account of default in payment of rent for a few months, the plaintiff had sought recovery of rent and had also sought eviction of the petitioner from the rented premises.

8. I find that the Trial Court would eventually have to consider as to what was the understanding between the plaintiff and the defendant when the defendant resorted to some construction on the

rented premises and whether there was an understanding of adjustment of the expenses as against the rent while adjudicating the suit. Though the impugned order dated 24/01/2019 has been passed and the defendant is put to notice that his defence would be struck off, it is informed that the defendant has still not complied with the said order.

9. In view of the above, I do not find that the impugned order could be branded as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)