

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.13825 OF 2017

Veer Alloys & Steel Co. Pvt. Ltd.
and others

Petitioners

Versus

Saraswati Dal and Besan Mills

Respondent

Mr. N.V.Gaware, advocate for the petitioners.
Mr. V.S.Bedre, advocate for the Respondent.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 29th August, 2019

PER COURT:

1 On 28.11.2017, this Court (**Coram: V.K.Jadhav, J.**) has heard the petitioners and has passed the following order:

"1 *Heard.*

2 *Learned counsel for the petitioners submits that the respondent-plaintiff has instituted R.C.S. No. 644 of 2011 for recovery of possession of the suit property and arrears of rent of the suit property from the defendants. The respondent instituted the said with pleading that the suit property is belonging to M.I.D.C. and in the year 1979 the respondent had taken*

suit property from M.I.D.C. Pending the suit, respondent has filed an application Exh.47 seeking directions to the petitioners-defendants to deposit the rent amount in the court. The trial court has directed the petitioners to deposit the rent amount as prayed in the said application. However, for non compliance of the said order, the respondent-plaintiff has filed application Exh.67 for striking out the defence of petitioner-defendant in terms of provisions of Order 15-A of C.P.C. (Bombay amendment). Learned counsel submits that there is no landlord and tenant relationship between the plaintiff and defendants. In the suit, relationship between the parties is in dispute. Learned counsel submits that in terms of provisions of Section 30 of M.I.D.C. Act 1961, the provisions of Bombay Rent Control Act or any other law corresponding thereto, shall not apply to any premises belonging to or vesting in the Corporation under or for the purpose of the said Act. Learned counsel submits that thus, the provisions of Order XV-A which speaks about lessor or a lessee institute a suit against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and wherein the court has directed to deposit such arrears on the date of order and further directing the defendants to deposit such amount

till the decision of the suit. Learned counsel submits that the reference to Order XV-A is not relevant in terms of pleadings of the parties to the suit. However, the trial court has not considered the same and passed the impugned order below Exh.67 directing that the defence taken by the defendants in the suit is struck off.

3 In view of above, issue notice to the respondents, returnable on 09.01.2018.

4 In the meanwhile, effect of impugned order dated 4.10.2017 below Exh.67 in R.C.S. No.644 of 2011 is hereby stayed till the next date of hearing."

2 The learned advocates for the respective sides submit today that the recording of oral evidence has concluded in RCS No.644 of 2011 and the matter is now at the stage of advancing final arguments.

3 Having considered the submissions of the learned advocates and having perused the earlier order of this Court, it is obvious that if a litigant claims to be a tenant and does not desire to invite an adverse order as regards being a defaulter, the rent has to be paid or atleast has to be deposited in the Court. The

petitioners-defendants claim to be tenants and at the same time do not desire to deposit the rent in the Court. Hence the impugned order dated 04.10.2017.

4 The learned advocate for the petitioners-defendants submits on instructions that in order to establishing their *bona fides*, they would deposit the entire rent amount. The learned advocate for the Respondent-plaintiff opposes the said request.

5 Considering the order passed by this Court on 28.11.2017, by which the impugned order was stayed, the trial Court has rightly recorded the oral evidence of both the sides. If the petitioners-defendants desire to take the risk of inviting an adverse order, they may not deposit the rent amount in the Court. However, if they desire that this legal hurdle should not come in their way, the entire rent amount shall be deposited in the trial Court on or before the next date of hearing, which is 30th September, 2019. If the said amount is not deposited, the defence of the petitioners-defendants shall stand automatically struck off and the trial Court would be at liberty to consider the final submissions of the plaintiff and decide RCS No.644 of 2011.

6 With the above observations, this petition is disposed off and the impugned order dated 04.10.2017 is kept in abeyance till 30th September, 2019. If the amount is deposited, the said order would lose it's efficacy.

RAVINDRA V. GHUGE
JUDGE

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