

**IN THE HIGH COURT OF BOMBAY AT GOA**

WRIT PETITION NO. 533 OF 2019

DURGA ENTERPRISES, REP. BY ITS  
MANAGING PARTNER, SANJEEV N.  
DESSAI.,

... Petitioner

Versus

SARVESH ROHIDAS NAIK SHIRODKAR AND  
ANR.,

... Respondents

Mr. Sudesh Usgaonkar and Ms. Marie Rosette Pereira,  
Advocates for the Petitioner.

Mr. A. D. Bhohe and Ms. Annelise Fernandes, Advocate for the  
Respondents.

Coram:- C. V. BHADANG, J.

Date:- 17th July 2019

**ORAL ORDER**

The challenge in this petition is to the order dated 26.02.2019 (below exhibit D-15) passed by the learned District Judge at Ponda in Regular Civil Appeal No.79/2017. By the impugned order, an application, exhibit D-15, filed by the petitioner, (appellant before the learned District Judge), for deposit of the arrears of 'rent', has been dismissed.

2. The brief facts are that the respondents had filed Regular Civil Suit No.34/2010/C against the petitioner for eviction and possession of the suit shop No.2 on the ground that the license under which the suit shop was given to the petitioner for eleven months has expired by efflux of time.

3. The petitioner, inter alia, contended that it was a tenant in respect of the suit shop and not a licensee.

4. The learned Trial Court by a judgment and decree dated 12.06.2017 decreed the suit for possession along with arrears of license fee and compensation which is a matter of challenge at the instance of the petitioner before the learned District Judge.

5. The petitioner filed an application, exhibit D-15, for deposit of the arrears of rent for a period of 22 months i.e. 01.10.2016 to 31.03.2017 at the rate of Rs.1858/- per month, from 01.04.2017 to 28.02.2018 (11 months) at the rate of Rs.2044/- per month and from 01.03.2018 to 31.07.2018 (5 months) at the rate of Rs.2248/- per month. The petitioner also intended to pay Rs.30/- which had remained outstanding from the rent for the earlier period. According to the petitioner, the said rent remained to be paid inadvertently and the petitioner is even ready to pay the rent for the subsequent period from 01.08.2018 to 31.01.2019 (6 months) at the rate of Rs,2248/- per month in advance.

6. The said application was opposed on behalf of the respondents on the ground that the petitioner had failed to deposit the license fees/compensation inspite of an order to that effect before the Trial Court. It is submitted that the petitioner is

claiming to be a tenant in respect of the suit premises when in fact it was a licensee and the attempt by the petitioner to deposit the amount representing it as 'rent' cannot be allowed.

7. The learned Trial Court by the impugned order has dismissed the application, inter alia, on the ground that the application is filed only to come within protection of the Rent Act. The learned District Judge has found that the petitioner cannot take such a stand at this stage and the appeal has to be decided on its own merits.

8. I have heard Mr. Sudesh Usgaonkar, the learned Counsel for the petitioner and Mr. Bhobe, the learned Counsel for the respondent. Perused record.

9. It is submitted by Mr. Usgaonkar, the learned Counsel for the petitioner, that there was an order dated 15.11.2010 passed by the learned Trial Court on an application under Order XV-A of Civil Procedure Code, filed by the respondents under which the petitioner was directed to deposit a sum of Rs.1043/- per month. It is submitted that although the said order was partly complied with, subsequently for a certain period, the amount could not be deposited. It is submitted that the appeal being continuation of the suit, the petitioner is entitled to deposit the amount which would be in compliance with the said order passed by the Trial

Court on 15.11.2010.

10. Mr. Bhobe, the learned Counsel appearing for the respondent, has submitted that the application is not bonafide and the petitioner after having defaulted in compliance of the order dated 15.11.2010 cannot now deposit the amount in the Appellate Court. It is submitted that the said order has merged with the decree and if at all the petitioner wants to make any deposit/payment under the said decree, it has to be done before the Trial Court in accordance with Order XXI Rule 1 of the Civil Procedure Code. It is submitted that, in any event, the petitioner has not shown under what provision the said application is filed.

11. I have considered the submissions made. The petitioner has not shown as to under what provision he is seeking deposit of the amount as arrears of rent before the appellate Court. On its own saying, the petitioner has only partially complied with the order dated 15.11.2010 and subsequently there was a default. It appears that none of the parties raised this issue during the course of the trial and, therefore, no consequences ensued as contemplated under Order XV-A of the Civil Procedure Code for non-compliance of the order dated 15.11.2010. The respondents have not chosen to apply under Order XV-A of Civil Procedure Code, before the Appellate Court.

12. The learned Counsel for the respondents is right that if at all the petitioner wants to comply with the monetary part of the decree and to make any payment under the said decree, it has to be done before the learned Trial Court in accordance with Order XXI Rule 1 of the Civil Procedure Code.

13. That apart, the petitioner has not shown as to how the impugned order results into manifest injustice or prejudice to the petitioner. It is now well settled that the supervisory jurisdiction under Article 227 of the Constitution of India is exercised to ensure that the sub-ordinate Courts and Tribunals act within the bounds of their authority and the orders passed do not result into manifest injustice (See SHALINI SHYAM SHETTY & ANR. VS. RAJENDRA SHANKAR PATIL, 2010 8 SCC 329). Thus, I decline to entertain the petition which is accordingly dismissed with no order as to costs.

14. The rival contentions of the parties on merits in the appeal are left open.

C. V. BHADANG, J.

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