

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 540 OF 2019

Mrs. Riddhi Rahul Kumar Gosalia
and others

...Petitioners

Versus

Safset Agencies Private Ltd.

...Respondent

....

Mr. Nikhil Wadikar a/w. Amruta Sawant i/b. Sonal Doshi & Co. for the
Petitioners.

Mr. Mayur Khandeparkar a/w. Z.A. Zariwalla, Hitesh Menon i/b. Dua
Asso. For the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 25th APRIL, 2019

P.C.

1. Heard Mr.Nikhil Wadikar, learned counsel for the petitioners and
Mr.Mayur Khandeparkar, learned counsel for respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the
petitioners, hereinafter referred to as the 'plaintiffs', have challenged the order
dated 29.11.2018 passed by the learned Judge, Court Room No.14 of the Court
of Small Causes at Mumbai below Exhibit-86 in L.E. & C. Suit No.83/109 of
2009. By that order, the learned trial Judge rejected the application made by
the plaintiffs under Order XXXIX Rule 11 of the Code of Civil Procedure,
1908 (for short, 'C.P.C.') for striking out the defence of the respondent,
hereinafter referred to as the 'defendant'.

3. In support of this Petition, Mr. Wadikar submitted that the

respondent was directed to pay amount of arrears of municipal taxes to the plaintiffs either producing those bills by the plaintiffs to the defendant to that regard or as per the directions of the Court within 4 weeks. The defendant did not comply the order dated 19th March, 2011 passed by the learned trial Judge below Exhibit 19. The plaintiffs, therefore, took out application Exhibit 28 under Order XXIX, Rule 11 of C.P.C for striking out defence of the defendant. That application was rejected on 30th July, 2013. Subsequently, application Exhibit 33 was taken out for non compliance of the order dated 8th May, 2012 passed by the Appellate Bench in Revision Application No.172 of 2011. By order dated 30th July, 2013, the learned trial Judge rejected that application. He submitted that again the defendant committed default and, therefore, the plaintiffs took out application Exhibit 86 under Order XXXIX, Rule 11 of the C.P.C for striking out defence. By the impugned order, the learned trial Judge has rejected the application. Mr. Wadikar submitted that consistently the defendant is flouting the orders and after the plaintiffs taking out application under Order XXXIX, Rule 11, he is complying the orders by depositing the amounts.

4. By order dated 17.1.2019 notice for final disposal was issued to the respondent. The proceedings of suit were stayed.

5. During the course of hearing, Mr. Khandeparkar made following suggestions, so as to obviate filing of applications under Order XXXIX Rule 11 of C.P.C. by the plaintiffs in future :

- i. The defendant will deposit Rs.5 Lakhs upfront with M/s. Gosalia Enterprises which will represent six monthly Municipal Taxes, for the period 1st April to 30th September and 1st October to 31st March.
- ii. In case, the defendant is unable to deposit Rs.5 Lakhs upfront with M/s. Gosalia Enterprises, the defendant will ensure that before the due date set by the Municipal Corporation in the bills, he will deposit the amount of Municipal Taxes with M/s. Gosalia Enterprises.
- iii. In case the defendant is unable to deposit the amount with M/s. Gosalia Enterprises even on or before the due date set by the Corporation, the defence of the defendant shall stand struck out without further reference to the Court and the defendant will not challenge that order.

6. Mr.Wadikar readily accepted the aforesaid suggestions. Mr.Khandeparkar assures that within one week from today, the defendant will issue cheque in the sum of Rs.4,76,000/- in the name of M/s.Gosalia Enterprises. Statements made by Mr.Khandeparkar, on instructions, are accepted in the form of undertaking to this Court. Mr.Wadikar states that if said cheque is tendered within one week from today, the plaintiffs will accept the same. The parties assure that they will extend full cooperation for disposal of the suit.

7. In view thereof, the petition is disposed of in terms of the statements recorded herein.

8. All concerned parties, including the trial Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)