

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1983 OF 2017**

Chandrakant Kuber Waliwade	]	Petitioner
Vs.		
Waman Keshav Kerkar	]	Respondent

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Mr. Kuldeep U. Nikam, for Petitioner.
Mr. Akshay Kulkarni i/b Mr. Ashutosh M. Kulkarni, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 10TH JANUARY, 2019.

P.C.

Heard Mr. Nikam, learned Counsel for the petitioner and Mr. Kulkarni, learned Counsel for the respondent.

2. This Petition takes exception to the order dated 19th October, 2016 passed by the learned Joint Civil Judge, Junior Division, Sangli below Exhibit 18 in R.C.S No.275 of 2015. By that order, the learned trial Judge allowed the application made by the respondent/plaintiff and directed the petitioner/defendant to deposit the arrears of rent of Rs.2,97,600/- and interest @ 15% per annum on the due amount Rs.19,200/-, aggregating to Rs.3,16,800/- in the Court within one month from the date of the order. The defendant was also directed to deposit monthly rent of Rs.2,400/- from the month of January, 2016 till decision of the suit regularly.

3. Rule. Mr. Kulkarni waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of

learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. One of the contentions raised by Mr. Nikam is that in paragraph 3 of the impugned order, the learned trial Judge observed that the petitioner/defendant did not file say to the application Exhibit 18. He invited my attention to say to Exhibit 18 and 19 dated 30th April, 2016. In other words, he submitted that the learned trial Judge did not consider say filed by the petitioner and observed that the petitioner did not file say.

5. It is common ground between the parties that contractual rent is Rs.2400/- per month. The suit is instituted on 5th August, 2015. The matter was heard on earlier occasion and was kept today so as to enable Mr. Nikam to take instructions from the petitioner as to within what time, he will deposit the amount @ Rs.2400/- per month in the trial Court from 6th August, 2012 to 5th August, 2015 being date of institution of the suit. He submits that the said amount comes to Rs.86,000/-. On instructions, he assures that within 4 weeks from today, the petitioner will deposit that amount in the trial Court under intimation in writing to the plaintiff's Advocate. He submits that the said amount may be invested in any Nationalized Bank and while deciding the suit, the learned trial Judge may be directed to pass appropriate orders in relation to the amount so invested.

6. Mr. Nikam further states that the petitioner will pay Rs.98,000/- to the plaintiff which covers the period from 5th August, 2015 till 5th January, 2019 @ Rs.2400/- per month within two weeks from today. Statements made on instructions by Mr. Nikam are recorded.

7. As mentioned earlier, the learned trial Judge did not consider say filed by the petitioner. On this short ground, the impugned order deserves to be set aside and is accordingly set aside. Application Exhibit 18 is restored to the file of the learned trial Judge. The learned trial Judge will consider say filed by the petitioner and after hearing both the parties, will dispose of application Exhibit 18 in accordance with law. In the meantime, the petitioner will deposit and pay amounts mentioned earlier. While deciding the suit, the learned trial Judge will pass appropriate orders in relation to Rs. 86,000/- with accrued interest. Rule is made absolute accordingly with no order as to costs. All contentions of the parties on merits are expressly kept open.

[R.G. KETKAR, J.]