

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 7876 OF 2019

Siddharth Suhas Bhagat	...Petitioner
<i>Versus</i>	
Bimal @ Bimalkumar Mannulal Agarwal	...Respondent

....
Mr.Siddharth Suhas Bhagat, the petitioner is present in-person.
....

CORAM : R. G. KETKAR, J.
DATE : 10th APRIL, 2019

P.C.

1. Heard Mr.Siddharth Suhas Bhagat, the petitioner appearing in person, at length.
2. This Petition takes exception to the order dated 14.11.2018 passed by the learned District Judge-18, Pune below Exhibit-5 in Regular Civil Appeal No.422/2018. By that order, the learned District Judge rejected the application made by the petitioner for staying the execution of the decree dated 30.7.2018 passed by the learned Additional Judge, Small Causes Court, Pune in R.C.S. No.302/2013.
3. While dismissing the application, the learned District Judge has referred to the order dated 23.7.2015 passed by this Court in Writ Petition No.5100/2015 as also the order dated 13.4.2018 passed by this Court in Writ Petition No.2478/2018. In order dated 13.4.2018, it was noted that earlier when on 6.4.2016 this Court called upon the petitioner to comply

the order dated 23.7.2015 passed in Writ Petition No.5100/2015, that time the petitioner stated that he is not ready and willing to comply that order. Even in the order dated 13.4.2018 it was noted that the petitioner was repeatedly called upon to express his willingness to comply paragraph-7 of the order dated 23.7.2015 in Writ Petition No.5100/2015. He was not willing to comply the order.

4. Mr. Bhagat empathetically stated that he is not ready and willing to comply said order requiring him to deposit Rs.25,000/- per month. He has invited my attention to the application dated 1.12.2012 addressed by him to the licensor calling upon the later to provide amenities stated therein. He submitted that as the licensor has not complied with the requisitions contained in that communication he is not in a position to use the suit property.

5. I have considered the submissions advanced by Mr.Bhagat. I have also perused the material on record. It is not in dispute that the petitioner was inducted in the suit premises on the basis of leave and licence agreement dated 1.10.2011. Clause-2 thereof reads thus:

“2. The Party of the Second Part hereby agrees to pay the Licensee Fee for the use of the said premises Rs.18,000/- per month (with 10% increase every year) in advance and same will be paid before 10th day of each calender month by the Party of the Second part to the party of the first part.

The schedule-of License Fee

For the 1st term of 12 months Rs. 18000/-

For the 2nd term of 12 months Rs. 19800/-

For the 3rd term of 12 months Rs. 21780/-.”

6. The petitioner had instituted Writ Petition No.5100/2015 in this Court challenging the orders dated 23.9.2014 and 21.2.2015. By order dated 23.9.2014, the petitioner was directed to pay arrears of license fee from 1.10.2012 to 30.9.2013 @ Rs.19,800/- per month, Rs.21,780/- from 1.10.2013 to 30.9.2014 within one month from the date of the order. The petitioner was further directed to continue to pay monthly compensation of Rs.39,600/- from 30.9.2014. It was made clear that if the petitioner licensee fails to pay the amount his defence shall be liable to be struck off as per Order XV-A of Code of Civil Procedure, 1908 (for short, 'C.P.C.'). As the petitioner did not comply the order dated 23.9.2014, by order dated 21.2.2015 the learned District Judge struck off his defence.

7. Aggrieved by these orders, the petitioner instituted Writ Petition No.5100/2015 in this Court. The matter was heard on 10.6.2015 and subject to the petitioner depositing an amount of Rs.3 Lakhs before the trial Court on or before 6.7.2015, ad-interim order in terms of prayer clause (c) was granted. The matter was heard on 6.7.2015. In paragraph-2, this Court noted that in pursuance of the order dated 10.6.2015, the petitioner had deposited Rs.1,15,000/-. The petitioner claimed that he has paid certain amount towards the electricity bill. As the petitioner paid certain amounts towards the electricity bill, this Court extended the time upto 17.7.2015 for depositing Rs.1,50,000/-. It was made clear that if by 17.7.2015, the

amount of Rs.3 Lakhs is not deposited in the trial Court ad-interim order in terms of prayer clause (c) shall stand vacated. The matter was ordered to be listed on 21.7.2015.

8. Writ Petition No.5100/2015 was thereafter heard on 23.7.2015.

In paragraph-7, this Court observed thus :

“7] If all such relevant circumstances are taken into consideration, then, interest of justice would be met if the petitioner is required to pay compensation of Rs.25,000/- p.m. rather than Rs.39,600/- p.m. as directed by the trial court. To this extent, the order dated 23rd September 2014 is modified. In pursuance of the interim direction issued by this Court, the petitioner has already deposited an amount of Rs.3 lakhs before the trial court. If there are any other arrears, the petitioner undertakes to clear the same within a period of four weeks from today.”

9. The petitioner was directed to pay compensation of Rs.25,000/- per month instead of Rs39,600/- per month as directed by the order dated 23.9.2014. The order dated 23.9.2014 was accordingly modified.

10. It appears that again the petitioner committed default and, therefore, by order dated 24.11.2015 his defence was struck out. The petitioner was directed to comply the order passed in Writ Petition No.5100/2015.

11. It appears that the petitioner instituted Writ Petition No.2478/2018 challenging the order dated 14.11.2017 below Exhibits-35 & 57 as also the order dated 11.12.2017 passed by the learned trial Judge below Exhibit-95. That petition was disposed of on 13.4.2018. In

paragraph-10, it was recorded that the petitioner was repeatedly called upon to express his willingness to comply paragraph-7 of the order 23.7.2015 in Writ Petition No.5100/2015. In the order dated 6.4.2016, this Court also called upon him to comply that order. It was recorded that the petitioner is not ready and willing to comply with that condition.

12. Even today, the petitioner is not ready and willing to comply paragraph-7 of the order dated 23.7.2015 in Writ Petition No.5100/2015. Eventually, by order dated 30.7.2018 the learned trial Judge decreed the suit. Aggrieved by that judgment, the petitioner preferred appeal. During pendency of the appeal he took out application for staying the eviction decree. By order dated 14.11.2018 the learned District Judge rejected the application for non-compliance of the order dated 23.7.2015 in Writ Petition No.5100/2015, the order dated 6.4.2016 in Writ Petition (Stamp) No. 2464/2016 and the order dated 13.4.2018 in Writ Petition No.2478/2018. Even today the petitioner is not ready and willing to comply with paragraph-7 of the order dated 23.7.2015 in Writ Petition No.5100/2015. In view thereof, no case is made out for interfering with the impugned order. Hence, the petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)