

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.854 OF 2019
IN
WRIT PETITION NO.5977 OF 2004

Allan Sebastian D'souza ... Applicant
Vs.
Soman Manas Joseph ... Respondent

Mr. V. E. Pereira for Applicant.
Mr. A. S. Khandeparkar i/b. Khandeparkar & Asso. for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 24, 2019

P.C. :

Not on Board. At the request of Mr. Pereira, taken up in the production Board.

2. Heard Mr. Pereira, learned Counsel for the applicant and Mr.Khandeparkar, learned Counsel for the respondent.

3. This is an Application for vacating the stay granted by this Court on 29.07.2004 as the original petitioner failed to comply with the order dated 13.04.2017.

4. Mr. Pereira invited my attention to the order dated 28.07.2008 passed by this Court condoning the original petitioner's delay in depositing the rent for the months of April and May, 2008 and directing the Small Causes Court at Mumbai to accept the arrears of rent for the months of April and May, 2008 as also rent for the further months. Relying upon this order, Mr. Pereira submitted that the original petitioner is supposed to pay interim compensation @ Rs.2,000/- per month plus contractual rent of Rs.35/- per month. The original petitioner is however, not paying contractual rent of Rs.35/- per month and thus,

has not complied order dated 13.04.2017. The stay, therefore, deserves to be vacated.

5. On the other hand, Mr. Khandeparkar submitted that by order dated 13.04.2017, this Court directed the original petitioner to pay interim compensation @ Rs.2,000/- per month from May, 2017 onwards to be paid on or before 10th day of the month. He submitted that he has complied that order by depositing the amount in this Court upto April 2019. He submitted that this Court did not direct paying contractual rent of Rs. 35/- per month to the respondent-applicant.

6. With the assistance of the learned Counsel for the parties, I have perused the order dated 13.04.2017. In particular, in paragraph 3, this Court directed the original petitioner to deposit interim compensation @ Rs.2,000/- per month. The order, however, does not direct original petitioner to pay contractual rent @ Rs.35/- per month. It is, therefore, not possible to vacate the interim stay granted by this Court. Hence, Civil Application is dismissed. It will be open to the applicant / original respondent to take out application for fixing date of hearing. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab