

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7325 OF 2013

Miss. Harita Sunil Parab

...Petitioner

Versus

Mr. Valerian Mathias
and another

...Respondents

.....

With

Civil Application NO. 2175 OF 2015

In

Writ Petition NO. 7325 OF 2013

.....

With

Civil Application NO. 2176 OF 2015

In

Writ Petition NO. 7325 OF 2013

....

Miss. Harita Sunil Parab, the Petitioner/Applicant is present in person.
Mrs. G.P. Vas, i/b. P. Vas & Co. & Nitin G. Raut, Advocate for
Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 12th MARCH, 2019

P.C.

1. Heard Ms. Harita Parab, the petitioner/applicant in person and Ms. G.P. Vas, learned counsel for respondent No.1, at length.
2. Writ Petition No.7325/2013 is instituted by the petitioner challenging the judgment and order dated 20.6.2012 passed by the Competent Authority, Konkan Division, Mumbai (for short, 'Competent Authority') in Application No.55/2011 as also the judgment and order

dated 9.7.2013 passed by the Additional Commissioner, Konkan Division, Mumbai (for short, 'Commissioner') in Revision Application No.340/2012 filed under Section 44 of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. By these orders, the authorities below directed the petitioner herein to hand over vacant and peaceful possession of Flat No.1738, Building No.43, Shramik CHS Ltd., D.N. Nagar, Andheri (West), Mumbai – 400 053 (for short, 'suit premises') to the respondent herein. The petitioner was directed to pay Rs.1,40,000/- towards the amount of compensation from June, 2010 till July, 2011 and further Rs.11,000/- per month from August, 2011 till the possession of the suit premises is handed over to the respondent. The respondent was given opportunity to appropriate the amount of security deposit towards compensation.

4. Civil Application No.2175/2015 is taken out by the petitioner for following reliefs :

- “a. Pending the hearing of the petition the Hon'ble High Court should direct the respondent No.1 and the society to carry immediate repair of the work.
- b. Pending the hearing of the petition the Hon'ble Court be restrained respondent no.2 to enter into premises and stop to give threats of dispossession.”

5. Civil Application No.2176/2015 is taken out by respondent No.1 *inter alia* praying for expediting hearing of the main petition; as

also directing the petitioner to deposit the sum of Rs.9,000/- per month from August, 2012 till date of hearing of the petition.

6. The petition was heard by this Court from time to time. By order dated 23.1.2014, the petitioner was directed to deposit Rs.70,000/- towards the amount of compensation from June, 2010 to July, 2011 in this Court before next date of hearing. Subject to the petitioner depositing the amount of compensation of Rs.9,000/- from August, 2011 as per clause (2) of the operative part of the order dated 20.6.2012 in this Court before next date of hearing, ad-interim order in terms of prayer clause (b) was granted.

7. The matter was thereafter heard on 20.2.2014. As and by way of last chance, time for depositing Rs.70,000/- was extended by two weeks. As and by way of last chance, time to deposit Rs.9,000/- per month from August, 2011 as per clause (2) of the operative part of the order dated 20.6.2012 was extended by four weeks.

8. It is not necessary to refer to various orders that were passed from time to time. Suffice it to make reference to the order dated 1.10.2018 passed by this Court in Civil Application Nos.2175/2015 and 2176/2015. As the petitioner was not in a position to make statement about depositing amount in terms of the orders dated 23.1.2014 and 6.2.2014, Nazir Department was directed to submit report as regards deposit, if any, made by the petitioner in terms

of these orders. The matter was adjourned to 23.10.2018.

9. The matter was heard on 23.10.2018. In paragraph-3 of that order, it was noted that Nazir department had submitted report to the effect that the petitioner had deposited Rs.70,000/- on 14.2.2014 towards compensation covering the period from June, 2010 to July, 2011 and Rs.99,000/- on 19.3.2014 covering the period from August, 2011 to June, 2012. It was thereafter observed that the petitioner did not deposit compensation after June, 2012. The submission of the petitioner that she is not occupying the premises for nearly two years and that instead of complying the orders dated 23.1.2014 and 6.2.2014, she is ready and willing to hand over possession of the suit premises after Diwali i.e. on or before 15.11.2018, was recorded. Assurance of the petitioner that she will file undertaking in this Court on or before 30.10.2018 as regards handing over possession was also noted. The matter was ordered to be listed on 31.10.2018 for reporting compliance.

10. The petition along with Civil Applications was heard on 21.11.2018. Statement of Mr. Raut, on behalf of the respondent, that the petitioner has complied the order dated 31.10.2018, was recorded.

11. Ms. Vas, appearing for the respondent, confirms the fact that the petitioner has handed over possession of the suit premises to the respondent on 15.11.2018. She further submits that as the petitioner has handed over possession, nothing survives in the main

petition.

12. As the petitioner has handed over possession of the suit premises, Civil Application No.2175/2015 is rendered infructuous as no relief can be granted. Hence, Civil Application is disposed of.

13. Insofar as Civil Application No.2176/2015 taken out by respondent No.1 is concerned, the same is disposed of reserving liberty to the first respondent to adopt appropriate proceedings for recovery of amount @ Rs.9,000/- per month from August, 2012 till 15.11.2018.

14. As mentioned earlier, after June, 2012 the petitioner/applicant has not deposited any compensation and ultimately has handed over possession of the suit premises to the respondent.

15. Ms. Parab however submitted that initially she was dispossessed from the suit premises. She submitted that she has also filed F.I.R. No.32/2011 on 19.1.2011 under Sections 448, 452, 341, 323, 504, 506 read with Section 34 Indian Penal Code, 1860 against the respondents. She has invited my attention to the order dated 9.6.2011 passed by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai. By that order, the petitioner was directed to be put in possession of the suit premises. The respondents were restrained from dispossessing her without following due process of law. She has also invited my attention to the order dated 4.8.2011 passed by the Division Bench of this Court (Coram: B.H. Marlapalle & U.D. Salvi, JJ.) in

Criminal Writ Petition No.527/2011 and in particular paragraphs-3 and 4 thereof. She has also invited my attention to the order dated 22.8.2011 passed by this Court (Coram: Mohit S. Shah, Chief Justice and Smt. R.P. SondurBaldota, J.) in Writ Petition (L) No.1626/2011 and in particular paragraphs-5 and 7 thereof. Ms. Parab also invited my attention to the order of the Apex Court dated 28.3.2012 passed in S.L.P. No.9485-9486/2012.

16. Ms. Parab submitted that the suit premises were in dilapidated condition and the respondents did not carry out repairs making it inhabitable condition. She sustained burn injuries in the suit premises. She also met with accident and, therefore, appropriate directions may be issued to the respondents to pay compensation/damages to her.

17. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. With the assistance of the learned counsel appearing for the parties, I have also perused the material on record as also orders relied by the petitioner. Insofar as the claim for compensation/damages is concerned, by order dated 4.8.2011 in Criminal Writ Petition No.527/2011 the Division Bench has given liberty to the petitioner to approach appropriate forum for recovery of compensation /damages from the respondent. In paragraph-3, Division

Bench observed thus :

“3. The petitioner, party-in-person, therefore, urged before us that the only relief, which requires to be considered in this petition for payment of compensation of Rs.7,50,000/- to be paid to her by the landlord i.e. respondent no.4 and in support of this prayer she has invited our attention to her Advocate's notice dated 21/7/2010 addressed to respondent no.4. It appears from the said notice that on 5/6/2010 when petitioner entered the bathroom with hot water, she slipped and fell down and sustained heavy burn injuries. She was admitted to the hospital for treatment for which he had to spent about Rs.3,00,000/-. As per the petitioner, this incident had taken place solely because of the negligence of the landlord in maintaining the toilet block and other premises in good conditions. It is thus clear that the claim for compensation, as raised through legal notice dated 21/7/2010, does not arise or has no connection with the main grievance raised in this petition, namely, illegal dispossession. The petitioner's remedy for recovery of compensation/damages from the landlord may be somewhere else and such a prayer cannot be entertained in the instant petition.”

18. In view thereof, it is not possible to accede to the prayers made by the petitioner for issuing direction to the respondents to pay compensation/damages. The petitioner is at liberty to approach appropriate civil Court for claiming these reliefs, if so advised.

19. Subject to above, Writ Petition and Civil Applications stand disposed of. Order accordingly.

(R. G. KETKAR, J.)