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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (STAMP) NO.23301 OF 2019
IN
WRIT PETITION NO.7308 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.23304 OF 2019
IN
WRIT PETITION NO.7308 OF 2015

Jagannath Satyawandan Ambre And Anr. ...Petitioners
vs
Navnath Gangaram Shinde And Ors. ...Respondents

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Mr. Shikur G. Kudle, for the Petitioners.

Mr. Vijay D. Patil, a/w. Mr. P.D. Dalvi and Mr. S.A. Kochrekar, i/b. Mr. Tushar Pimple, for Respondent No.1.

Mr. S.D. Rayrikar, AGP, for Respondent Nos. 2 to 4.

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CORAM : S.C. GUPTE, J.

DATED: SEPTEMBER 4, 2019

P.C. :

. Heard learned Counsel for the parties.

2. This review petition seeks review of an order passed by this Court on a writ petition, which was heard along with a civil application. The writ petition challenged orders passed by the competent authority, Konkan Division, Mumbai in an application for eviction filed under Section 24 of Maharashtra Rent Control Act, 1999 ("the Act") and the

revisional authority, namely, Additional Commissioner, Konkan Division, Mumbai. When the writ petition was admitted, the Petitioner deposited a sum of Rs.2.50 lakhs in Court as a condition for seeking interim relief. When Rule was issued in the petition, in addition to this amount of Rs.2.50 lakhs, the Petitioner was directed to deposit compensation of Rs.10,000/- per month with effect from 1 December 2014. The writ petition was heard and disposed of by an order dated 14 August 2019. Whilst disposing of the petition, the eviction order passed by the competent authority as well as the eviction order passed by the Konkan Commissioner were set aside and the Petitioner's application for leave to defend, was allowed. The competent authority was directed to proceed with the matter under Section 43(4)(c) and 43(5) of the Act, keeping all contentions of the parties open. Since the Petitioner succeeded in having the eviction order set aside, and the matter was, accordingly, at large before the competent authority, the amount deposited by the Petitioner was allowed to be withdrawn unconditionally. This aspect of the order is the subject matter of the review petition.

3. It is submitted that the Petitioner should not have been permitted to withdraw the amount unconditionally; he should have been put to suitable conditions. The order exhibits no error apparent or mistake of the kind referred to in Order 47 Rule 1(1) of the Code of Civil Procedure. The petition was for challenge to a decree of eviction, which was passed after two authorities below had concurrently held against the Petitioner, rejecting his application for leave to defend. In the premises, in his challenge to the two orders below, he was asked to deposit amounts in Court. Now that his challenge has succeeded and he has

been granted leave to defend and the matter is open and at large on merits, there is no point in keeping the amounts in Court or putting the Petitioner to terms for withdrawal of the amounts. The order of deposit could not have been passed by the authorities below during the pendency of the eviction proceedings upon a leave to defend being granted. If that is so, and if leave to defend has now been granted and the proceedings are pending before the competent authority for eviction of the Petitioner, there is no question of either the Petitioner depositing any amount in Court or submitting to any condition for withdrawing the amount already deposited in Court. At the most the Court, whilst disposing of the writ petition of the Petitioner, could have made an observation that any withdrawal would be subject to final orders that may be passed in the eviction proceedings and without prejudice to the rights and contentions of the parties. Learned Counsel for the Respondents have no objection if this clarification is issued. It is clarified accordingly.

4. In the premises, there is no merit in the review petition. The review petition is dismissed.

5. In view of the dismissal of the review petition, nothing survives in the civil application, and the same is also dismissed.

Smita
Gonsalves

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(S.C. GUPTE, J.)