

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 14653 OF 2018
WITH
WRIT PETITION NO. 14660 OF 2018**

Ms. Vijyalaxmi Lakhmichand Manik
and another.

...Petitioners

vs.

Deepak Lachchamndas Khetani

...Respondent.

Mr.H.K. Vazirani for the Petitioners in both the matters.

Mr.Chaitanya Bhandarkar for the Respondent in both the matters.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 1st October, 2019.

P.C.:

The petitioners are the owners and plaintiffs in RAE Suit No.1439 of 2014. They have sued the defendant for ejectment and possession of the property. In fact, the owners sued on the grounds of *bona fide* requirement, arrears of rent, and nonuser or change of user, as the petitioners' counsel has put it.

2. In the course of time, the defendant appeared and filed the written statement. Amongst other things, the defendant denied any landlord-tenant relationship. According to him, he now owns the property because of an agreement of sale. Later, the owners filed Exhibit 18- application under Order

XV-A seeking directions to the defendant to pay rent at the rate of Rs.7000/- per month. In fact, the owners demanded the arrears of rent from 2011, besides prospectively pending the suit. On the other hand, at the same time, the defendant filed Exhibit 21 application under Section-9A of the Code of Civil Procedure. He questioned the Small Cause Court's decision to try the suit. Through the Order dated 1.3.2017, the trial Court disposed of both the Exhibits 18 and 21.

3. About the jurisdiction, the trial Court seems to have held that this issue can be taken up along with the other issues during the trial. Then, on Exhibit 18, the trial Court directed the defendant to pay Rs.7000/- per month as rent or compensation to the owner, pending the suit. But it ordered arrears only from 2013 and 2016.

4. Initially, the defendant could not comply with the directions; instead, he asked the trial Court to extend the time. Then, the trial Court extended the time by 15 days. First, the defendant undertook to pay Rs.25,000/-. Again, the trial Court further extended the time by 15 more days. But the defendant did not pay the amount. Once again, he applied for an extension. This time, the Court granted three more days. It seems, eventually, he paid Rs.25,000/- out of the amount the trial Court ordered under Exhibit 18.

5. At any rate, the defendant filed Revision Application No.163 of 2018 before the Appellate Bench of the Small Cause Court. He questioned the trial Court's Order to him to pay arrears of rent as well as damages pending the suit. When that application was pending, the owners filed the Exh.26 application under Order 15A of CPC, requiring the trial Court to strike off

the defendant's defence. It was on the premise that he failed to comply with the Court's Order passed below Exhibit-18. Then, on 22.12.2017, the trial Court allowed that application. Once again, aggrieved, the defendant filed another revision: Revision Application No.164 of 2018, under Order 41 Rule 2 of CPC.

6. The appellate Bench first took Revision Application No.163 of 2018 and allowed it through its Order dated 31.7.2018. It has held that the trial Court has simply taken the amount mentioned by the owners as the rent and directed the defendant to pay. In that context, the appellate Bench has held that the Order suffered from non-application of mind. So it has also allowed the defendant's second Revision Application No.164 of 2018. Aggrieved, the owners filed these writ petitions: Writ Petition No.14653 of 2018 and Writ Petition No.14660 of 2018.

7. Shri. H.K. Vazirani, the learned counsel for the owners, has submitted that the appellate Bench has erred in reversing the trial Court's findings. According to him, the property was let out in 1961. Then, the rent was Rs.40/-, under a leave and licence agreement. Now, as the property is commercial in nature, located in a prime place, it fetches at least Rs.7000/- per month. According to him, the owners issued statutory notice, demanding Rs.7000/- rent per month, besides the arrears of rent. But the defendant did not respond. So he forfeited the opportunity to question the amount demanded by the owners.

8. Shri Vazirani has also submitted that as Order 15A of CPC was introduced in 1983, Section 11 of the Maharashtra Rent Control Act must be

read with that provision. According to him, this Court's earlier full Court decision no longer holds the field because of this later statutory development. To continue, Shri Vazirani has also submitted that, at no point of time did the defendant apply to the trial Court even to pay the admitted rent. According to him, the defendant ought to have applied to have the standard rent fixed if he desired or ought to have continued to pay the rent demanded by the owners to avoid his disqualification. At any rate, Shri Vazirani has elaborately argued on the title dispute, but that may not be germane here.

9. To conclude, Shri Vazirani has taken me through Section 15 of the Maharashtra Rent Control Act and has contended that there is a fixed time-frame provided in the Act for the tenant to comply with the landlord's demand for rent: 90 days from the date of the notice. After receiving the suit summons, the tenant must start in 90 days to deposit the rent. The defendant has not complied with the statutory demand. After referring to a few precedents, Shri Vazirani has strongly contended that the impugned Order requires reversal; that means, the defendant's defence ought to be struck off.

10. On the other hand, Shri Chaitanya Bhandarkar, with equal intensity, has contended that once the defendant denies the landlord-tenant relationship, he has no longer obliged to comply with the statutory demand, which binds only the tenant. In this context, he has drawn my attention to the agreement of sale and then the impact of Section 106 the Transfer of Property Act on this transaction. At any rate, to support the revisional Order, Shri Bhandarkar has submitted that the trial Court's orders did suffer from non-application of mind. The trial Court has, he maintains, mechanically

calculated the valuation of the premises and fixed the rent, as alleged by the owners. So he wants the Court to dismiss both the writ petitions.

11. Heard Shri. H. K. Vazirani, the learned counsel for the petitioners, and Shri Bhandarkar, the learned counsel for the respondent.

12. Indeed, the scope of these two writ petitions is limited. We cannot go into the question of title at this stage. In other words, the interim relief is essentially based on the plaintiff's pleadings, in the face of the defence set up by the defendant. It only requires *prima facie* appreciation.

13. Here, the trial Court has decided to consider the question of its inherent jurisdiction along with the other issues. Until then, we should proceed as if it had the jurisdiction. So, the owners filed Exhibit 18 application under Order 15A of CPC. The owners initially issued a notice and demanded Rs.7000/- as rent. Later, once the defendant entered an appearance, he did not, admittedly, comply with the statutory mandate under Section 15 of the Maharashtra Rent Control Act. Nor has he taken any steps under the same Act for any standard rent fixation.

14. There is a force in the contentions advanced by the owners' counsel that any arrangement in the Maharashtra Rent Control Act must be in consonance with Section 15A of CPC. If I examine the trial Court's Order dated 1.3.2017, it has not discussed what should have been the reasonable compensation pending the suit. It has simply taken the figures supplied by the owners and directed the defendant to pay that amount. To that extent, I find no fault with the revisional Court's Order.

15. At any rate, I refuse to consider the defendant's plea that there is no landlord-tenant relationship or that he has become the owner under an agreement of sale. Those contentions will wait. So do I reject his contention that he owes no obligation to pay the rent or damages.

16. Under these circumstances, as the trial Court's Order is devoid of any reasoning or justification for the amount it has directed the defendant to pay, I uphold the revisional Court's Order. But the revisional Court has simply allowed the revision application without any further steps. It ought to have, in my view, remanded the matter to the trial Court, so the trial Court could have decided the matter about the interim compensation.

I, therefore, set aside the impugned Order in both the writ petitions and remand the matter to the trial Court to hear both the parties and to fix the amount of interim compensation the defendant is required to pay.

No order on costs.

(DAMA SESHADRI NAIDU, J.)