

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2310 OF 2018

Rajni Suresh Singh ... Applicant
Vs.
Rajeshkumar Raichand Jain ... Respondent

AND
CIVIL APPLICATION NO.311 OF 2019

Rajeshkumar Raichand Jain ... Applicant
Vs.
State of Maharashtra and others ... Respondents

IN
WRIT PETITION NO.14158 OF 2017

Rajeshkumar Raichand Jain ... Applicant
Vs.
State of Maharashtra and others ... Respondents

Mr. Saurabh Bhutala i/b. Mr. Amogh Khadye for Applicant in C.A.No.2310 of 2018 and for Respondent No.2 in C.A.No.311 of 2019.

Mr. Sanjay Gidh for Respondent in C.A.No.2310 of 2018 and Applicant in C.A.No.311 of 2019.

Mr. A. A. Alaspurkar, AGP for Respondent-State.

Ms Khevana Dagli i/b. Mr. Ashok Saraogi for Respondent No.5 in W.P.No.14158 of 2017.

CORAM : R. G. KETKAR, J.
DATE : MARCH 6, 2019

P.C. :

Heard Mr. Bhutala, learned Counsel for the applicant in C.A.No.2310 of 2018 and for the respondent No.2 in C.A.No.311 of 2019, Mr. Gidh, learned Counsel for the respondent in C.A.No.2310 of 2018 and for the applicant in C.A.No.311 of 2019, Mr. Alaspurkar, learned AGP for the respondent-State and Ms Dagli, learned Counsel for the respondent No.5 in W.P.No.14158 of 2017.

2. Writ Petition No.14158 of 2017 was instituted by Rajeshkumar

Raichand Jain (for short 'plaintiff') challenging the order dated 30.10.2017 passed in Miscellaneous Appeal No.145 of 2017 as also the order dated 30.10.2017 passed below exhibit-7 in that Appeal by the Appellate Bench of the Small Causes Court, Mumbai. By order dated 30.10.2017, the Appellate Court allowed the Appeal preferred by Rajni Suresh Singh (for short 'defendant') and quashed and set aside the order dated 21.09.2017 passed by the learned trial Judge below exhibit-10 in L.D. Suit No.73 of 2017. The Appellate Court dismissed application exhibit-10, which was filed by the plaintiff for handing over possession among other reliefs. The Appellate Court also disposed of application exhibit-7 for stay of the operation of the trial Court's order dated 21.09.2017 as the main Appeal itself was allowed.

3. After hearing both sides, Writ Petition was allowed on 27.02.2018. In terms of paragraph 19, the defendant was directed to handover possession of the suit premises to the plaintiff and after the plaintiff was put in possession, he was directed to pay licence fee to the defendant. It is common ground between the parties that plaintiff is put in possession of the suit premises on 13.03.2018.

4. Civil Application No.2310 of 2018 is taken out by the defendant for the following reliefs:

- “A) That this Hon'ble Court may be pleased to recall order dated 27.02.2018;
- B) That this Hon'ble Court may be pleased to direct the respondent to handover possession of the suit premises to the applicant;
- C) That this Hon'ble Court may be pleased to direct the respondent to pay monthly license fee / compensation at the rate of Rs.53,350/- per month from 13.03.2018 till handing over possession.”

5. The grievance of the defendant is that the plaintiff is not paying the licence fee @ Rs.53,350/- per month from 13.03.2018, and

therefore, he should be directed to handover possession.

6. Civil Application No.311 of 2019 is taken out by the plaintiff inter alia praying for the following reliefs:

- “a) This Hon'ble Court be pleased to modify the operative portion of paragraph No.6 in paragraph 19 in Writ Petition No.14158 of 2017 (Coram: R. G. Ketkar, J.) dated 27.02.2018 in view of the averments made in this application;
- b) During the pendency of this application be pleased to grant stay to the direction to pay the license fee to the respondent.”

7. Mr. Gidh submitted that plaintiff has suffered loss to the tune of Rs.3,44,94,400/- till 13.04.2018. The claim of the plaintiff is pending before the learned trial Judge. He, therefore, submitted that the prayer made by the defendant for payment of licence fee @ Rs.53,350/- from 13.03.2018 requires to be adjusted from the claim of damages made by the plaintiff.

8. It is not possible to accede to the request made by Mr. Gidh. In paragraph 12 itself, plaintiff has asserted that the said claim is pending before the learned trial Judge. If that be so, plaintiff is at liberty to substantiate the said claim before the trial Court. It is admitted position that in pursuance of the order dated 27.02.2018, plaintiff is put in possession on 13.03.2018. It is also admitted position that plaintiff has not paid licence fee. It is, therefore, necessary for the plaintiff to pay the licence fee as per paragraph 19(6) of the order dated 27.02.2018.

9. Mr. Gidh states that plaintiff Rajeshkumar Raichand Jain is present in the Court. He has tendered photocopy of his Aadhar card, which is taken on record and marked 'X' for identification. Upon taking instructions from him, Mr.Gidh states that plaintiff will comply clause

[6] of paragraph 19 of the order dated 27.02.2018 passed by this Court in Writ Petition No.14158 of 2017. The plaintiff will pay the arrears of compensation within a period of 3 months from today and will not seek further extension of time. He further states that in case the plaintiff is unable to pay the entire arrears from 13.03.2018 till 28.02.2019 @ Rs.53,350/- per month, within a period of three months from today, the plaintiff will handover vacant and peaceful possession of the suit premises to the defendants and will not raise any objection. Statements made by Mr. Gidh, on instructions, are recorded.

10. In view thereof, plaintiff Rajeshkumar Raichand Jain shall pay compensation @ Rs.53,350/- from 13.03.2018 till 28.02.2019 within three months from today. In addition to this, he will also go on regularly paying licence fees @ Rs.53,350/- from March, 2019 onwards on or before 10th day of next succeeding month/s. In case the plaintiff does not pay arrears within the stipulated time, he will handover vacant and peaceful possession of the suit premises to Ms Rajani Suresh Singh. Civil Applications are accordingly disposed of.

11. List the matters for 'reporting compliance' on 10.06.2019.

(R. G. KETKAR, J.)

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