

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13969 OF 2017

Ravindra Murlidhar Kalekar ... Petitioner
Vs.
Bastimal Nihalchand Porwal (decd) and others ... Respondents

Mr. Rohit Joshi for Petitioner.
Mr. Akshay Pawar for Respondents No.1(a) to 1(f).

CORAM : R. G. KETKAR, J.
DATE : APRIL 15, 2019

P.C. :

Heard Mr. Joshi, learned Counsel for the petitioner and Mr. Pawar, learned Counsel for the respondents No.1(a) to 1(f) at length.

2. By order dated 06.03.2019, Mr. Joshi was appointed on behalf of the petitioner as it was not possible to appoint Advocate from the Legal Services Authority having regard to the income of the petitioner. Mr. Joshi readily agreed and accordingly has advanced the submissions.

3. This Petition takes exception to the order dated 28.09.2017 passed by the Appellate Bench of the Small Causes Court below exhibit-32 in Appeal No.146 of 2015. By that order, the Appellate Court rejected the application exhibit-32 made by the petitioner / respondent in appeal / original plaintiff *inter alia* praying for following reliefs:

“(i) As advocate for Appellant reply my application for recovery of rent (exhibit 16) on 28.04.2016, please keep this application on board for hearing and order at an early.

(ii) The Defendant (Appellant herein) may be directed to deposit total arrears with interest amount to Rs.1,94,779/- in the account section of Small Causes Court within one month period.”

4. In support of this Petition, Mr. Joshi submitted that plaintiff filed application for issuing direction to the respondents No.1(a) to 1(f) / defendants to deposit total arrears with interest amounting to Rs.1,94,779/- @ Rs.254/- per month. The impugned order, however, records that the plaintiff had filed application fixation of standard rent of Rs.254/- per month. He submitted that basically, the approach of the Appellate Court in treating the application exhibit-32 as application for fixation of standard rent is wholly perverse. The Appellate Court, while rejecting the application, noted that vide order below exhibit-18, while staying the execution of the eviction decree, defendants are directed to deposit Rs.10,000/- per month plus to pay Rs.93/- per month being a contractual rent. He submitted that the Appellate Court committed serious error in rejecting the application more particularly in terms of prayer clause (ii) of the application.

5. On the other hand, Mr. Pawar has invited my attention to the order dated 08.07.2002 passed by the learned trial Judge directing the defendants to deposit Rs.93/- per month, without prejudice to the rights and contentions of both the parties. He further submitted that as per the order below exhibit-18, defendants are regularly depositing compensation of Rs.10,000/- per month as also paying agreed rent of Rs.93/- per month. He submitted that as the plaintiff has not challenged order dated 08.07.2002, no fault can be found with the impugned order.

6. He further submitted that in fact, the Appellate Court has fixed the matter today at 3.00 p.m. for pronouncing order as the arguments are concluded and matter is reserved for orders.

7. In rejoinder, Mr. Joshi submitted that order dated 08.07.2002 was passed pending the Suit and as the appeal is now pending, the Appellate

Court should have allowed the application in terms of prayer clause (ii).

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, during the pendency of the Suit, by order dated 08.07.2002, the learned trial Judge directed the defendants to deposit Rs.93/- per month. The Suit was thereafter decreed on 30.04.2014. Aggrieved by that decision, defendants preferred appeal. Pending the appeal, they took out application exhibit-18 under Order XLI, Rule 5 of the Code of Civil Procedure, 1908. The Appellate Court stayed the eviction decree subject to directing the defendants to deposit the compensation @ Rs.10,000/- per month plus to pay Rs.93/- per month being a contractual rent. It is not a grievance of the plaintiff that defendants are not complying orders passed below exhibit-18.

9. After the trial Court passed order on 08.07.2002, basically, the prayer clause (ii) made by the plaintiff in exhibit-32, itself, was wholly misconceived. Once the learned trial Judge had directed the defendants to deposit rent @ Rs.93/- per month, plaintiffs could not have prayed for issuing direction to the defendants to pay @ Rs.254/- per month that too without challenging the order. It is also material to note that defendants are complying the order passed by the Appellate Court below exhibit-18. Apart from that, it is common ground between the parties that the Appellate Court has fixed the appeal today for pronouncing order. In view thereof, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed. Before parting, the Court places on record the appreciation of assistance rendered by Mr. Joshi.

(R. G. KETKAR, J.)