

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.34438 OF 2018

Jagdish Baburao Mane ... Petitioner
Vs.
Sanjay Anant Honale and another ... Respondents

Mr. P. S. Dani, Senior Advocate a/w. Mr. Durgaprasad Sabnis i/b. Lex Firmus for Petitioner.

Mr. Narayan Samant i/b. Ms Geeta P. Sonwane for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : MARCH 28, 2019

P.C. :

Heard Mr. Dani, learned Senior Counsel for the petitioner and Mr. Samant, learned Counsel for the respondent No.1 at length.

2. Leave to amend so as to challenge the order dated 29.04.2016 passed by the learned trial Judge below Exhibit-26 is granted. Amendment shall be carried out within one week from today and the amended slip shall be made over to other side during that period.

3. This Petition takes exception to the order dated 29.04.2016 passed by the learned Judge, Court Room No.34 of the Court of Small Causes at Mumbai, Bandra Branch below Exhibit-26 in R.A.D. Suit No.361 of 2011 as also the order dated 19.10.2018 passed by the Appellate Bench of the Small Causes Court in Revision Application No.106 of 2017. By these orders, the Courts below allowed application Exhibit-26 made by the plaintiff (petitioner herein) to deposit arrears of Rs.7,59,000/- being arrears upto 31.07.2012 on or before the next date. The plaintiff is further directed to deposit an amount of Rs.70,000/- per month from August, 2012 to May, 2016 on or before next date. The plaintiff is permitted to deposit the amount of Rs.70,000/- from June, 2016 on or

before 10th day of each succeeding month till final disposal of the Suit. The said order is passed without prejudice to the rights and contentions of the parties.

4. Mr. Dani submitted that defendant No.2 has accepted that the rent @ Rs.70,000/- is accepted by defendant No.2 till May, 2011 and thereafter defendant No.2 has accepted his share of Rs.35,000/- since 2011 till date. As defendant No.2 has withdrawn his share of Rs.35,000/- per month, the Courts below were not justified in directing the plaintiff to deposit @ Rs.70,000/- per month.

5. After arguing the petition for quite some time, Mr. Dani, on instructions of the petitioner, who is present in the Court, states that petitioner will deposit arrears of rent @ Rs.35,000/- per month from September, 2010 till May 2011 and @ Rs.70,000/- per month from June, 2011 till 31.03.2019 within four weeks from today under intimation in writing to the learned Counsel for the defendants No.1 and 2. He further assures that the rent @ Rs.70,000/- per month will be deposited from April, 2019 onwards in the trial Court on or before 10th day of the next succeeding month in the trial Court under intimation in writing to the learned Counsel for the defendants No.1 and 2. Statements made by Mr. Dani, on instructions, are recorded.

6. Mr. Samant states that permission may be granted to the respondent No.1 for filing application for withdrawal of the amount.

7. In view thereof, Petition is disposed of in the following terms:

a. The petitioner shall deposit arrears of rent @ Rs.35,000/- per month from September, 2010 till May, 2011 in the trial Court under intimation in writing to the learned Counsel for the defendants No.1 and 2;

- b. The petitioner shall deposit arrears of rent @ Rs.70,000/- per month from June, 2011 till 31.03.2019 in the trial Court under intimation in writing to the learned Counsel for the defendants No.1 and 2;
 - c. The petitioner shall go on depositing monthly rent from April, 2019 onwards @ Rs.70,000/- per month on or before 10th day of the next succeeding month till the disposal of the Suit finally, under intimation in writing to the learned Counsel for the defendants No.1 and 2;
 - d. Defendant No.1 is permitted to file application for withdrawal of the amount so deposited by the petitioner. The learned trial Judge will pass appropriate order after hearing both the sides;
 - e. Liberty is reserved to the defendant No.1 to file application for enhancement of the rent;
 - f. All contentions of the parties on merits in that regard are expressly kept open;
8. Parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

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