

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 627/2019

(KISHOR SHAMJIBHAI MEHTA **VERSUS** WAJIBEN SHAMJIBHAI MEHTA (DEAD) THR. LR's
 HASMUKH SHAMJIBHAI MEHTA & OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri S.O. Ahmed, counsel for petitioner.
 Shri Atharva S. Manohar, Advocate h/f Shri A.A. Naik, counsel for R-1 & 2..

CORAM : A.S. CHANDURKAR, J.

DATE : APRIL 01, 2019.

In this writ petition filed under Article 227 of the Constitution of India, the petitioner challenges the order passed below Exhibit 238 dated 09.10.2018 by which the trial Court has rejected the application seeking direction against the defendant nos.2 and 3 to deposit the amount of rent withdrawn by them which rent was paid by the defendant no.10.

The petitioner is the original plaintiff who has filed suit for partition and separate possession of various properties. The subject matter of that suit is also a premises occupied by the defendant no.10 as a tenant. In the said suit, the plaintiff had moved an application below Exhibit 43 praying that the defendant nos.8 to 12 who were tenants in the suit property be directed to deposit rent in the Court during pendency of the suit. The trial Court by its order dated 01.07.2010 allowed that application but kept the question of disbursement of rent as deposited open for being decided finally alongwith the suit. Thereafter the plaintiff moved an application below Exhibit 238 in which it was prayed that though the defendant no.10 was directed to deposit the rent in the Court, the amount of rent was being deposited in Special Civil Suit No.4 of 2011 which was filed by the defendant nos.2 and 3. The

rent deposited was withdrawn by the defendant nos.2 and 3 thus resulting in breach of the order passed below Exhibit 43. Hence, their defence was liable to be struck off. This application was opposed by the defendant no.2 by stating that the plaintiff had no locus to file the said application as it was the defendant nos.2 and 3 who had as plaintiffs filed Small Cause Suit No.4 of 2011. The trial Court by the impugned order rejected the said application below Exhibit 238 on the ground that such deposit was made in the other suit and that there was no reason to strike out the defence of said defendants. Being aggrieved, the present writ petition has been filed.

Shri S.O. Ahmed, learned counsel for the petitioner submitted that the trial Court ought to have allowed the application below Exhibit 238 in the light of the fact that the defendant nos.2 and 3 had failed to comply with the orders passed below Exhibit 43 by the trial Court. By suppressing that order below Exhibit 43, the defendant nos.2 and 3 persuaded the trial Court to permit them to withdraw the amount of rent in Small Cause Suit No.4 of 2011. As there was breach of the directions contained in the order passed below Exhibit 43, the defence of the said defendants was liable to be struck off. The trial Court erred in rejecting that application.

Shri A.S. Manohar, learned counsel for the respondent supported the impugned order. According to him, no facts had been suppressed and in the light of the orders passed in Small Cause Suit No.4 of 2011, the rent was being deposited by the defendant no.10. It was further submitted that though the petitioner herein had filed an application for intervention in Small Cause Suit No.4 of 2011 that application was rejected. In view of order passed below Exhibit 81 in Small Cause Suit No.4 of 2011 and the subsequent order on the objection filed at Exhibit 11,

the trial Court was justified in rejecting the application below Exhibit 238.

After hearing the learned counsel for the parties it is seen that though the trial Court had passed an order below Exhibit 43 on 01.07.2010, subsequent thereto the defendant nos.2 and 3 had filed Small Cause Suit No.4 of 2011 against the defendant no.10 for recovery of possession. The petitioner herein had sought to intervene in that suit but the trial Court rejected the said application filed below Exhibit 81. Similarly, the objection raised by the petitioner herein to the deposit of rent in Regular Civil Appeal No.68 of 2017 has been considered by the Appellate Court and that objection has been rejected on 15.09.2018. In this factual backdrop, the trial Court did not commit any jurisdictional error when it refused to strike off the defence of defendant nos.2 and 3. In terms of the order passed below Exhibit 43, the question of disbursement of the amount of rent deposited during pendency of the proceedings is required to be adjudicated when the suit would be finally decided.

In that view of the matter, I do not find any reason to interfere with the order passed by the trial Court below Exhibit 238. Hence, the writ petition stands dismissed. The parties shall bear their own costs.

JUDGE