

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

MISCELLANEOUS CIVIL APPLICATION NO.478/2019 IN W.P.NO. 627/2019 (D)
 (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 applicant.
 Shri A.S. Manohar, counsel for NA-1 & 2.

CORAM : A.S. CHANDURKAR, J.

DATE : APRIL 26, 2019.

The applicant seeks review of the order dated 01.04.2019 whereby the writ petition as filed challenging the order passed below Exhibit 238 has been dismissed.

It is submitted by the learned counsel for the applicant that the application below Exhibit 238 contains a prayer that the defendant nos.2 and 3 should be directed to deposit the amount of rent withdrawn by them disregarding the order passed below Exhibit 43 alongwith interest. While dismissing the aforesaid writ petition, it has been observed in the penultimate paragraph that Exhibit 238 refers to a prayer for striking off the defence of the defendant nos.2 and 3. It is submitted that this prayer has been made in the application at Exhibit 239. Against the order passed below Exhibit 239, a miscellaneous appeal has been filed which is pending. It is further submitted that so far as the reference to the order dated 15.09.2018 by the Appellate Court dismissing the application below Exhibit 11 raising objections with a view to direct the respondent in that appeal to deposit the amount of rent is concerned, this application was rejected in the absence of the counsel for the objector. A review application has thus been filed

before the Appellate Court *vide* Exhibit 17. In view of observations made on these two aspects, the order dated 01.04.2019 deserves to be reviewed.

On the other hand, the learned counsel for the non-applicant nos.1 and 2 submitted that considering the limited scope for exercising review jurisdiction, there is no ground made out for reviewing the order. He however does not dispute the fact that the prayer with regard to the striking out defence of respondent nos.2 and 3 is subject matter of the application below Exhibit 239.

Heard the learned counsel. The challenge in the aforesaid writ petition was to the order dated 09.10.2018 passed below Exhibit 238 by which the application moved by the petitioner seeking directions to the defendant nos.2 and 3 to deposit the amount of rent withdrawn by them as paid by defendant no.10 had been rejected. By an order passed below Exhibit 43 on 01.07.2010, the trial Court had observed that the question of disbursement of rent would be adjudicated when the suit was finally decided. In the meanwhile, the defendant no.10 had deposited rent in the Court which rent was withdrawn by the defendant nos.2 and 3 and in that light the application below Exhibit 238 came to be moved. Though one of the reasons mentioned is the rejection of the application below Exhibit 11 by the Appellate Court, I find that even if that order was passed in the absence of the counsel for the objector and a review application has thus been filed, same would not make much difference in the present case. In the light of the fact that the trial Court by passing an order below Exhibit 43 has already directed that the question of disbursement of rent would be adjudicated when the suit would be finally decided, I do not find any error apparent in the order dated 01.04.2019 for exercising

review jurisdiction. It is however clarified that the observations with regard to refusal of the trial Court to strike out defence of defendant nos.2 and 3 shall not be taken into consideration while adjudicating the miscellaneous appeal preferred by the petitioner herein challenging the order passed below Exhibit 239.

With these observations, the Miscellaneous Civil Application is disposed of.

JUDGE

APTE