

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6883 OF 2018

Salim Khan s/o Munir Khan
-vs-
Ishrat Jahan wd/o Mukhtar Ahmed and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. S. Sonare, Advocate for petitioner.
Shri V. A. Bramhe, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.
DATE : September 03, 2019

Rule. Heard finally.

The challenge raised in the present writ petition is to the order passed below Exhibit-16 which was an application preferred under provisions of Order XV-A of the Code of Civil Procedure, 1908 (for short, the Code). By the impugned order the petitioner has been directed to pay rent at the rate of 1500/- per month for one shop premises.

2. It is the grievance of the petitioner who is the defendant in the suit for eviction that the agreed rent was Rs.1200/- per month from January 2014 which fact has been specifically pleaded in paragraph 4 of the plaint. Merely because in the reply to the legal notice issued to the petitioner, he has referred to the rent being

Rs.1500/- for one shop premises, the trial Court has passed the impugned order directing the petitioner to deposit Rs.1500/- per month for one shop premises. It is submitted that at the most direction to deposit rent at the rate of Rs.1200/- per month for each shop premises could have been directed.

3. On behalf of the respondent it is submitted that in view of admission of the petitioner that the rent was Rs.1500/- per month for one shop premises the direction issued by the trial Court does not deserve to be interfered with.

4. Perusal of the plaint and especially paragraph 4 thereof indicates that according to the plaintiff the rent payable from January 2014 was Rs.1200/- per month for one shop premises. As per the provisions of Order XV-A of the Code the defendant is liable to deposit the undisputed amount of arrears of rent. Since the plaintiff has pleaded that the rent of one shop premises since January 2014 was Rs.1200/- per month, the trial Court ought to have directed deposit of that amount under provisions of Order XV-A of the Code. As regards reply to the legal notice is concerned, same is a matter to be considered in the suit. On that basis the trial Court was not justified in directing deposit of

Rs.1500/- per month for one shop premises.

5. Accordingly the order dated 08/08/2018 passed below Exhibit-16 is partly modified. It is directed that instead of Rs.3000/- per month the defendant shall pay Rs.2,400/- per month for both the shop premises from July 2014 as per that order.

The order dated 08/08/2018 is partly modified to the aforesaid extent.

The writ petition is allowed in aforesaid terms with no order as to costs.

JUDGE