

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

Writ Petition No. 2112 of 2019

[SAARC Academy through its President Dr (Raj) Abdul Vakil Siddiqui ..vs.. Renu H. Sobhani and anr.]

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

Court's or Judge's orders

Mr. Akok Daga, Advocate for the petitioner
Mr. D. N. Dani, Advocate for the respondents

CORAM : ROHIT B. DEO, J.

DATED : 8-2-2022

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. This petition seeks to assail, *inter alia*, the order dated 26-2-2019 rendered in S.D. 15/2018 whereby the executing court rejected the application preferred by the petitioner - tenant under Section 47 of the Code of Civil Procedure, 1908. The petitioner further assails the order dated 26-2-2019 whereby the executing court rejected the application preferred by the petitioner-tenant for cancellation of warrant of possession.

3. During the course of hearing, the learned counsel for the landlord Mr. Dani has pointed out certain glaring facts. The petitioner-tenant suffered a decree for recovery of rent and in execution, the parties entered

into compromise whereby the tenant agreed to as follows.

“3] The SAARC Academy the non-applicant shall occupy the premises for one year from 1st August, 2017 and ending upon 31st July, 2018. The non-applicant who is running SAARC M. Society which runs SAARC Academy, through Dr. Raj Vakil Siddiqui who is the non-applicant is the President of the said Society and Academy.

4] In case the Non-applicant fails to pay the current rent of Rs. 18,000/- and one month arrears of Rs. 18,000/-, totaling Rs.36,000/- for any 3 months, the Non-applicant shall be liable to vacate the premises and the Applicant shall be entitled to get the vacant possession of the premises by executing the warrant and this settlement shall be treated as a Decree along with the entire arrears of rent from 01.02,2010.

5] The parties agree that if the Non-applicant vacates premises within one year, that event the applicant shall not claim, any previous arrears and rent. However the Non-applicant shall keep paying one month arrears and one month current rent till vacation of premises.”

4. According to the learned counsel for the respondents, the tenant has neither paid the rent as agreed nor has he vacated the premises, as solemnly undertaken by compromise deed dated 2-8-2017.

5. In response to Court query, the learned counsel for the petitioner Mr. Alok Daga does not dispute that the

rent is not paid as agreed and neither is the tenanted structure vacated.

6. Considering the overall facts, it would not be appropriate to entertain the petition in writ jurisdiction unless the petitioner - tenant demonstrates some *bona fides* by depositing the entire arrears of rent in the executing court within a week. However, the affidavit of compliance shall be filed in the Registry of this Court. If entire arrears are not deposited and affidavit of compliance is not filed, the petition shall stand dismissed without further reference to the Court.

7. Stand over to 15-2-2022.

JUDGE

wasnik