

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3226 OF 2019

Mr. Peter Fernandes (since deceased) ...Petitioners
through his LRs Mrs. Savielle
Monteiro & Anr.

V/s.

Mr. Pravin Brahmadeo Pandey ...Respondents
& Ors.

BHALCHANDRA
GOPAL
DUSANE

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Mr. Rajesh B. Parab for Petitioners

CORAM: MADHAV J. JAMDAR, J.
DATE: 27th JANUARY, 2023

P.C.:

- 1.** Heard Mr. Parab, learned Counsel appearing for the Petitioners.
- 2.** The Petitioners have challenged order dated 10th January 2019 passed by learned Judge, Small Causes Court, Mumbai below Exhibit 39 in R.A.D. Suit No. 694 of 2013.
- 3.** This Court by order dated 14th March 2019 issued notice to the Respondents and it is specifically mentioned in the order that subject to the time constraint and convenience of

the Court, the Petition will be disposed of finally on the next date of hearing.

4. Mr. Parab states that the Respondent No.1 is the only contesting Respondent as Respondent Nos.2 to 4 have already sold the property to Respondent No. 1 and the same has been specifically mentioned in the written statement.

5. The Office noting shows that Respondent No. 1 has been served, however, none appears for Respondent No.1. This Court while issuing notice before admission, in order dated 14th March 2019 made following observations:

"2. This Petition takes exception to the order dated 10/01/2019 passed by the learned Judge below Exhibit-39 in R.A.D. Suit No. 694 of 2013. By that order, the learned Trial Judge rejected the application made by the Plaintiffs for extension of time for depositing the rent.

3. Mr. Parab has invited my attention to the order dated 25.09.2017 passed by the learned Trial Judge below Exhibit-36. Application Exhibit-36 was taken out by Plaintiff No.1 seeking permission to deposit the arrears of rent @ Rs.120.46 per month from October, 2013 as also for depositing the future rent in the Court at the same rate of rent. By order dated 25.09.2017, the learned Trial Judge allowed the application. The operative part of the order reads thus:

ORDER

1. The application Exhibit 36 is hereby allowed as under, without prejudice to the rights of the defendants.
2. The Plaintiffs are permitted to deposit the occupation charges @Rs.115/- plus an increase in 5 percent as on dated 01.02.1973 and the increase of the rent accordingly upto and from 01.04.2013 till 30.09.2017.
3. The Plaintiffs are permitted to deposit the future rent as will be accrued as on dated 01.04.2013 till the final disposal of the suit.
4. The defendants are permitted to withdraw the amount deposited by the Plaintiffs without prejudice to their rights.
- 4.** Mr. Parab submitted that the learned trial Judge, however, did not fix any time limit for depositing the amount. The plaintiffs took out application for extension of time, which is rejected by the impugned order. As basically in the order dated 25.09.2017, no time limit was specified, the learned trial Judge was not justified in rejecting the application."
- 6.** It is clear that by order dated 25th September 2017 passed by learned Judge, Small Causes Court, Mumbai below Exhibit 36 in RAD Suit No.694 of 2013 although the Plaintiffs were permitted to deposit the occupation charges, no time

limit was granted. The application for extension bearing Exhibit 39 was filed seeking extension of time to deposit rent within four weeks. However, as the said application was rejected, the rent could not be deposited.

7. Mr. Parab states that the rent which has been directed to be deposited is more than Rs.2,00,000/-. He states that the said rent will be deposited within four weeks from today. He also states that in addition to the deposit of said rent, an amount of Rs.15,000/- will be deposited towards costs.

8. None appears for Respondent No. 1 although served.

9. For the above reasons and the reasons recorded in the order dated 14th March 2019, the Writ Petition is allowed by passing following order:

ORDER

(I) The order dated 10th January 2019 passed below Exhibit 39 in RAD Suit No. 694 of 2013 is quashed and set aside.

(II) The said application bearing Exhibit No. 39 in RAD Suit No. 694 of 2013 seeking extension of time to deposit rent/occupation charges as directed by order dated 25th September 2017 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit 36 is allowed.

(IV) The Petitioner to deposit the amount as directed by order dated 25th September, 2017 within four weeks from today.

(IV) The Petitioner also to deposit the amount for the further period within eight weeks.

(V) The Petitioner to deposit future rent till disposal of the Suit.

(VII) In addition to the above deposit, the Petitioner to deposit Rs.15,000/- towards costs.

(VII) Respondent No.1 is permitted to withdraw the deposited amount towards rent as well as towards costs.

(IX) The withdrawal of the rent amount is without prejudice to the rights of both the parties.

10. The Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)