



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 8025 OF 2022

(LAXMAN GOPALRAO KALE & ANR..VS.. M/S. ALOK ENTERPRISES & OTH.)

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

Court's or Judge's orders

Shri R.M.Sharma, Advocate for Petitioners.

Shri S.S.Ghate, Advocate for Respondent Nos.2, 4 to 7.

CORAM : ANIL S. KILOR, J.

DATED : DECEMBER 13, 2023.

1. Heard.
2. In the present writ petition the order dated 02/09/2022 passed below Exh.27 by the Additional Judge, Small Causes Court, Nagpur in Regular Civil Suit No.87 of 2018 rejecting the application filed by the plaintiff for striking off the defence of the defendants under Order 15A read with Section 151 of the Code of Civil Procedure, is under challenge.
3. The petitioner-plaintiff has filed a suit for eviction and for recovery of possession under Sections 15, 16(1)(e), (g) and (n) of the Maharashtra Rent Control Act, 1999. In the said suit, the plaintiff filed an application under Order 15A of the Code of Civil Procedure for directing the defendant No.1 to deposit the arrears of rent for a period from 01/06/2007 to 31/10/2017 and further directing to pay rent every month until further orders. The said application came to be allowed vide order dated 04/12/2019. The order reads thus :

“ORDER

- 1. Application is partly allowed in following terms.*
- 2. Defendant No.1 shall pay an amount of Rs.85,500/- towards arrears of rent from 01.03.2015 to 30.11.2019 within a period of two months in two installments.*
- 3. Defendant No.1 shall regularly deposit monthly rent of Rs.1,500/- per month in the Court on or before 15th day of every month from 01.12.2019 onwards till the decision of the suit.*
- 4. Failure to comply the above directions would result in the consequences, as provided under Order XV-A of the Code of Civil Procedure (Bombay Amendment).”*

4. The plaintiff thereafter moved an application under Order 15A read with Section 151 of the Code of Civil Procedure on 28/09/2021 for striking off the defence of the defendants for non-compliance of the order dated 04/12/2019. Subsequently, on 16/11/2021 the defendants filed an application for condonation of delay in complying the order below Exh.24, dated 04/12/2019, which came to be allowed in view of order below Exh.30.

5. Thereafter, another application (Exh.31) was moved by the defendants on 02/09/2022 for grant of permission to deposit the arrears of rent to comply the order dated 04/12/2019 passed below Exh.24.

6. The plaintiff gave no objection for depositing the amount. Thereupon, the learned trial Court passed the order below Exh.31, saying that “*Without prejudice to the rights of the parties, nazir to accept.*”

7. On the same day, the learned trial Court passed the impugned order below Exh.27 rejecting the application filed by the plaintiff under Section 15A for striking off the defence of the defendants, by recording the following reasons :

“4. On careful perusal of the record, it appears that as per the order passed below Exh.24 this Court has directed the defendant no.1 to pay Rs.85,000/- towards arrears of rent from 1.3.2015 to 30.11.2019 within a period of 2 months in two installments and also directed to deposit monthly rent of Rs.1500/- per month in the Court or on or before 15th day of every month regularly from 1.12.2019 onwards till decision of the suit. It is not strongly disputed that after passing of the said order due to Covid-19 pandemic in March 2020, Government of India had proclaimed national lockdown and also in the year 2021, there was lockdown due to second wave of Covid pandemic. On perusal of the record it appears that the plaintiffs have filed present suit against the defendants for recovery of possession under Section 15, 16(1)(e) (g) and (n) of The Maharashtra Rent Control Act, 1999. It also appears that the defendants have challenged the suit by filing written statement on record. P.W. No.1 Moreshwar Kale and Anuj Kale have filed their affidavit of examination in chief at

Exh.22 and Exh.23 respectively. Thereafter the application at Exh.24 was filed which came to be partly allowed on 04.12.2019. Thereafter present application is filed on 28.9.2021. But, it appears that the said period was a pandemic period with an intervals.

5. Now, it is to be seen that whether defendant no.1 has complied with the order passed by my predecessor at Exh.24 or not. It appears that defendant no.1 has deposited the cheque bearing No.000455 of Rs.85,000/- and cheque bearing No.000456 of Rs.40,500/- dt. 15.3.2022 by filing application at Exh.30 for compliance of directions no.2 and 3 respectively mentioned in the order passed below Exh.24. The defendant has also deposited amount of Rs.10,500/- through cheque No.000424 by filing application at Exh.31. Therefore, it appears that the defendant no.1 has deposited above mentioned amount in compliance of directions given in the order passed below Exh.24. In such circumstances, it will not be just and proper to allow present application for striking of defence of the defendants. It will be correct to say that the defence of defendant no.1 cannot be struck off on the ground of non payment of a rent as defendant no.1 has already paid said amount vide Exh.30. For the correct decision of the subject matter and in order to settle actual controversy involved in this matter completely, evidence from both parties is essential. No serious prejudice will be caused to the plaintiff side if present application is rejected. Per contra, defendant side will suffer irreparable loss if present application is allowed. ...”

8. From the above referred observations, it is evident that the learned trial Court while rejecting the application Exh.27 filed by the petitioner/plaintiff, has not taken into consideration the order passed below Exh.31 observing that the permission to deposit the amount was granted without prejudice to the rights of the parties.

9. The trial Court has discarded the said order and held that the defence of the defendant No.1 cannot be struck off on the ground of non-payment of rent as the defendant No.1 has already paid the said amount vide Exh.30.

10. When the permission to deposit the amount was granted, without prejudice to the rights of the parties, the trial Court ought to have gone into the relevant provisions and facts while deciding the application Exh.27. However, the learned trial Court failed to look into the relevant provisions of the Code of Civil Procedure and also the relevant facts.

11. In the circumstances, I am of the opinion that reconsideration of application Exh.27 is necessary. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The matter is remanded back to the trial Court to decide the application Exh.27 afresh after hearing both the parties.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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