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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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INTERIM APPLICATION NO.945 OF 2024
IN
WRIT PETITION NO.98 OF 2024

Mahendra B. Thakkar ...Applicant

V/s.

Hatim Chinwala & Ors. ...Respondents

Mr.Nagendra Dube i/b Lex Convenens for the Applicant.

Mr.Samarth Chowdhary i/b Indus Law for Respondent Nos.2, 3
and 6.

Mr.Alimohammed Abdulali Chinwala - Respondent No.6 present
in Court.

Mr.Raviraj Gamare with Ms.Shubhangi Chorge for Respondent
Nos.4 and 5.

CORAM : RAJESH S. PATIL, J.

DATE : 12TH APRIL, 2024.

P.C. :-

1. This Court on 26 March 2024 passed the following
order :-

“1. The present writ petition is filed by the

original plaintiff/deed holder, in Rent Act proceedings.

2. After the judgment and decree was passed by the Trial Court on 22 January 2022, the plaintiff filed an execution application. The defendant nos. 2 and 3 filed an application for setting aside the ex parte judgment and decree dated 22 January 2020. The said application of defendant Nos. 2 and 3 was dismissed by this Court by passing an order on 25 August 2023, in Writ Petition No.6872 of 2023. The Supreme Court in SLP No.21582 of 2023 confirmed the order passed by the High Court.

2. Thereafter, Defendant Nos. 2 and 3 filed an appeal before the Appellate Bench of the Small Causes Court, Mumbai, challenging the ex parte judgment and decree dated 22 January 2020 along with a delay condonation application. In the meantime, the defendant nos. 2 and 3, preferred an application before the Executing Court seeking stay to the execution of the judgment and decree passed by the Trial Court. On 14 December 2023, the Executing Court granted stay to the Trial Court judgment and decree, subject to the defendant Nos. 2 and 3 paying compensation at the rate of Rs.50,000/- per month from the date of the decree. The defendant nos. 2 and 3 was of the belief that as on 14 December 2023, a sum of Rs.18,00,000/- was payable as per the compensation payable at rate of Rs.50,000/- per month.

3. Since the said sum of Rs.18,00,000/-, which was an admitted figure by the defendant nos. 2 and 3, was not paid/deposited, the

original plaintiff filed the present writ petition before this Court. The original plaintiff has challenged the order dated 14 December 2023 passed by the Executing Court, thereby granting stay to the judgment and decree passed by the Trial Court, on the ground that such an order could have never been passed by an Executing Court. At the most the Appellate Bench of the Court of the Small Causes, who was hearing the appeal filed by the defendant nos. 2 and 3 could have on merits decided whether any stay could be granted to the impugned judgment and decree passed by the Trial Court.

4. While this writ petition was pending before this Court, the Court by its order dated 22 February 2024 directed the original defendant nos. 2 and 3 and the respondent no.6 in this writ petition to deposit a sum of Rs.18,00,000/- within a period of one week from the date of the order, i.e., 22 February 2024.

5. On 29 February 2024 the defendant nos. 2 and 3 so also the respondent no.6 in this writ petition sought permission to deposit a sum of Rs.10,00,000/- by 14 March 2024.

6. Mr. Kanade appearing for the original defendant nos. 2, 3 and respondent no.6 herein submits that thereafter a sum of Rs.10,00,000/- was deposited in the Court of Small Causes however, the sum of Rs.8,00,000/- has not been deposited by the original defendant nos. 2 and 3.

7. Mr. Dubey, learned counsel for the original plaintiff/ decree holder submits that the matter is kept before the Executing Court,

tomorrow in order to pass further orders. He submits that even the sum of Rs.8,00,000/- has not been deposited by the defendant nos. 2 and 3. According to him, in fact, as of today the outstanding amount is Rs.14,00,000 (24,00,000/- Rs.10,00,000/- deposited in the Court of small Causes).

8. Mr. Kanade submits that as of today the defendant nos.2 and 3 are in possession of the suit premises, as per the instructions given to him by respondent no.6, who is present in this Court, who also happens to be Constituted Attorney of defendant nos. 2 and 3.

9. Mr. Kanade submits that later on the executing Court has already recorded that the impugned order has become infructuous as defendant nos. 2 and 3 have not complied with the direction.

10. Taking into consideration the submissions made by the parties and documents on record, I am of the opinion that the impugned order dated 14 December 2023 could not have passed by the Executing Court, as the Executing Court had no jurisdiction to pass such as conditional order. The Executing Court is hereby directed to proceed further with the execution of the judgment and decree dated 22 January 2020. And If required the local police station should assist the decree holder in the execution of the impugned judgment and decree.

11. The defendant nos. 2 and 3 and respondent no.6 were directed to remain present in this Court. However, today only respondent

no.6 is present in this Court. As regards the defendant no.3, have been informed by Mr. Kanade on instructions that at present she is hospitalized in Masina Hospital, Byuculla, Mumbai. However, there are no reasons given as to why No.2 (Abdul Ali Chinwala) is not present in this Court.

12. Prima facie, I am satisfied that the disobedience with the order of this Court is willful. However, in order to give one more and last opportunity to comply with the order of this Court, I direct that the defendant No.2 shall remain personally present before this Court on 3 April 2024 for showing cause as to why charge be not framed against the defendant no.2.

13. The amount of Rs.10,00,000/- deposited by defendant Nos. 2, 3 and respondent no.6 before the Court of Small Causes is allowed to be withdrawn by the original plaintiff.

14. Stand over to 3 April 2024. The matter to come up under the caption of "Compliance".

15. Parties to act upon an authenticated copy of the order."

2. Mr.Chowdhary appearing for Respondent Nos.2, 3 and 6 submits that his clients have already handed possession of the suit premises to the Applicant. Mr.Dube tenders possession letter dated 11 April 2024. The said possession letter is taken on record and marked "X" for identification. For ease of reference, a

scanned copy of the possession letter is reproduced
hereinbelow:-

X
R.P. 12/2
24/4/24
Tendered in court
AB
12/4

Date: 11 April 2024

To,
Mr. Mahendra Balbhadra Thakkar
28-A, Maheshwari Mansion,
4th Floor, 34 Napier Sea Road, Mumbai 400 026

Dear Sir,

Re : In the High Court of Judicature at Bombay
Civil Appellate Jurisdiction
Writ Petition No. 58 of 2024
Mahendra B Thakkar ... Petitioner
Versus
Hatim Chinwala & Ors. ... Respondents

Kindly note that pursuant to the undertaking given to the Hon'ble Bombay High Court on 3 April 2024 in the captioned matter, we, Abdulali Chinwala (Respondent No. 2) and Alimohammed Abdulali Chinwala (Respondent No. 5), have handed over vacant and peaceful possession of Gate No. 1, Second Floor, Thakkar Industrial Estate, 34 C, Champsey Bhimji Road, Anjivadi, Mazgaon, Mumbai 400 010 ("the said Premises") to you on 11 April 2024 at 11.00 am.

Kindly acknowledge receipt of the same.

Yours Sincerely,
Alimohammed Chinwala
CA of Respondents 2 & 3
and Respondents.

alimohammed@gmail.com
8169272802

Mahendra Thakkar
9920569152

Mr.Dube appearing for the Applicant on instructions of his client submits that possession of the suit premises has been received by the Applicant.

3. Mr.Chowdhary on instructions of his clients, submits that the Appeal filed by his clients before the Court of Small Causes, Mumbai, will also be withdrawn on or before 6 May 2024. Statement made by Mr.Chowdhary is accepted as an undertaking given to this Court. In view of the compliance being made by the parties, the present Interim Application is also disposed of.

(RAJESH S. PATIL, J.)