IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.269 OF 2024

Neha Vinayak Nagwekar ....Petitioner
V/S
Harendra Damji Bhalla ....Respondent

Mr. Prashant Nayak *for the Petitioner.*
Mr. Pradeep Thorat a/w Ms. Aditi Naikare *for Respondent.*

CORAM: SANDEEP V. MARNE, J.
DATE : 12 JUNE 2024.

P.C.:

1 The challenge in the present Petition is to the order dated 28 April 2022 passed by the Court of Small Causes on Application at Exhibit-20 to the limited extent of directing the Petitioner/Plaintiff to deposit the amount of security deposit in the Court.

2 In Plaintiff's suit for recovery of possession against the Defendant, Application at Exhibit-20 was moved for deposit of arrears of rent as per Order 15A of the Code of Civil Procedure 1908 (**Code**). The Court of Small Causes allowed the said Application by order dated 28 April 2022 and has directed the Defendant to pay arrears of license fees for a period from 1 April 2019 to 31 March 2020 at the rate of Rs.14,500/- per month. For the period after 1 April 2020 onwards at monthly compensation at the rate of

Rs.90,000/- is directed to be paid. The Defendant is directed to deposit the arrears of Rs.14,500/- and Rs.90,000/- in the Court and further to continue to deposit the amount of compensation in each succeeding months.

3 It appears that the Defendant challenged the order dated 28 April 2022 in Revision before the Appellate Bench. However the Appellate Bench dismissed the Revision by judgment and order dated 10 April 2023. The Defendant filed Writ Petition No.8520 of 2023 challenging the order of the Small Causes Court dated 28 April 2022 and of the Appellate Bench dated 10 April 2023. The Writ Petition came to be disposed of by this Court by order dated 31 October 2023 observing *inter alia* that the possession of the premises were taken over from the Defendant. This Court noted the fact that the Plaintiff disputed the factum of handing over possession of the suit premises. This Court further held that if the possession of the suit premises were forcibly taken by third party, it is for the Plaintiff to adopt necessary steps in that regard. This Court therefore directed that the amount of monthly compensation is required to be deposited by the Defendant only upto 11 August 2020.

4 It appears that while directing the Defendant to pay arrears of license fees and compensation, the Court of Small Causes further directed the Plaintiff to deposit the amount of Rs.6,75,000/- towards security deposit in the Court. In the pending Revision filed by the Defendant before Appellate Bench, apparently Plaintiff raised objection about direction for deposit of

security deposit. According to Plaintiff the said objection was not decided by the Appellate Bench while rejecting the Revision of the Defendant on 10 April 2023. Accordingly, the Plaintiff/Petitioner has filed the present Petition challenging the order of the Court of Small Causes dated 28 April 2022 to the limited extent of direction to deposit the amount of security deposit.

5 Mr. Thorat, the learned counsel appearing for Respondent/Defendant raises a preliminary objection to maintainability of the Petition on the ground that the order dated 28 April 2022 is revisionable under provisions of Section 42 of the Presidency Small Causes Court Act, 1882 and that indeed the Defendant/Respondent had filed Revision Application before the Small Causes Court and accordingly if Petitioner is aggrieved by any direction in the order dated 28 April 2022 she also can file a Revision Application before the Appellate Bench of the Small Causes Court. On the other hand, the learned Counsel appearing for the Petitioner would submit that in the pending Revision before the Appellate Bench, the objection to the direction for deposit of security deposit was raised but has not been decided.

6 The next contention of Mr. Thorat is that the direction for deposit of amount of security deposit is issued by the Small Causes Court on the basis of concession made by the Plaintiff in her written submissions. Inviting my attention to observations of the Small Causes Court in paragraph 18 of the order, Mr. Thorat would submit that Plaintiff has specifically expressed readiness to refund the amount of security deposit before the Small Cause

Court and now she cannot take volte face and challenge the said direction. On the other hand, the learned counsel appearing for the Petitioner submits that the readiness to refund the amount of security deposit was shown by the Plaintiff only after vacation of the suit premises and after handing over possession thereof to the Plaintiff. He has taken me through the relevant paragraph of the written notes of arguments filed before the Small Causes Court which also clearly stated that the refund of security deposit would be made only after vacation of the suit premises. Now there is a dispute as to whether possession of the suit premises is handed over to the Plaintiff or to a third party.

7 In my view, the real issue is whether the Court of Small Causes has jurisdiction while entertaining application under Order 15A of the Code to direct Plaintiff to make any deposit. Under provisions of Order 15A of the Code, the Court can direct either tenant or licensee to deposit arrears of rent or license fees. The provision does not enable the Court to direct landlord/Plaintiff to make any deposit during pendency of the suit. So far as the security deposit in the present case is concerned, arrangement in that regard can obviously be made by the Small Causes Court at the time of passing of final decree. Provisions of Order 15A of the Code could not have been utilized for the purpose of directing Plaintiff to make a deposit during pendency of the Suit. In my view therefore, the direction No.5 of the Small Cause Court directing Plaintiff to deposit the amount towards security deposit suffers from serious jurisdictional error.

8 Mr. Thorat would submit that on account of Petitioner not raising the issue about direction No.5 at the time of decision of Writ Petition No.8520 of 2023, Defendant/Respondent has lost the valuable right in seeking adjustment of amount of security deposit when the Court directed deposit of compensation at the rate of Rs.90,000/- per annum from 1 April 2020 to 11 August 2020. I am unable to agree. Ideally the Petitioner ought to have challenged the order of the Small Causes Court by filing Petition before this Court within a reasonable time and got the same heard alongwith Writ Petition No.8520 of 2023. However failure by Petitioner to do so does not prejudice the Defendant/Respondent. Perusal of the direction No.7 of the Trial Court would indicate that Plaintiff will have to file Application before the Trial Court for withdrawal of amount deposited under clause (2), as modified by the order passed by this Court on 31 October 2023. As and when the Plaintiff makes an application for withdrawal of the amount under clause (2), it would be open for the Defendant to raise the issue of Rs.6,75,000/- being lying with the Plaintiff towards security deposit.

9 The Writ Petition is accordingly disposed of by setting aside clause 5 of the order dated 28 April 2022.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM
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