

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16833 OF 2024

M/s Agra Engineering Co. & Ors.

...Petitioners

Versus

M/s Shree Bombay Cotton Mills

...Respondent

Mr. Dhruva Gandhi a/w Ms. Anuja Divadkar, Mr. Yashwant Singh
for Petitioners.

Mr. Somnath Vora a/w Mr. Suresh Gupta for Respondent

CORAM: MADHAV J. JAMDAR, J.

DATED : 7th JANUARY 2025

P.C.:

1. By the present Writ Petition filed under Article 227 of the Constitution of India, challenge is to the legality and validity of the the Orders passed by the learned Judge, Small Causes Court, Mumbai in applications bearing Exhibit Nos. 20, 21 and 22 respectively filed in R.A.E. and R. Suit No.255 of 2019 as well as to the Orders dated 2nd May 2024 passed in Revision Application No.39 of 2024, 40 of 2024 and 41 of 2024.

2. By the impugned Orders, the application filed by the Petitioner for condonation of delay in filing written statement, for taking written statement on record and seeking leave to deposit arrears of rent together with interest have been rejected.

3. The learned Trial Court *inter alia* set out the reasons in paragraph No.6 and 7, which are as follows:

“6. Perused the record. According to defendant No.3 he became aware about the present proceeding in June, 2022 but, record shows that defendant No.3 has been served by pasting and also on new address in 2019. Further it is seen from the record that on 19.10.2019. Memo of Appearance has been filed on behalf of defendant No.3 at Exh.16. Therefore contention of defendant No.3 that he was not aware about these proceedings being filed against him and he came to know about these proceedings only in June, 2022 is not correct.

7. Further, defendant No.3 has stated in para No.5 of his application that the period in question after the present suit was filed was gravely affected by Covid 19 Pandemic making it difficult for him to be present at the suit premises and hence, he was not aware about the summons and proceedings filed against him. Again at the cost of repetition, it is necessary to mention that defendant No. 3 has not only been served at the suit premises but, has also been served at his new address upon which Memo of Appearance has been filed on his behalf at Exh.16. Therefore, this ground taken by defendant No. 3 is also not correct.”

4. Mr. Dhruva Gandhi, learned Counsel appearing for the Petitioner submitted that in fact there was dispute going on between the partners of Defendant No.1- M/s Agra Engineering

Company, a partnership firm. He submitted the following factual position:-

(A) Petitioner No.1 is a Partnership Firm, of which Petitioner Nos. 2 and 3 are partners.

(B) A dispute arose *inter-se* Petitioner Nos. 2 and 3.

(C) A commercial arbitration Petition, being a Commercial Arbitration Petition No. 314/2017 and an arbitration application, being an Arbitration Application No. 215/2017 came to be filed before this Hon'ble Court on account of the disputes between Petitioner Nos. 2 and 3;

(D) An Order dated 4th May 2018 was passed by this Hon'ble Court (Coram: S.J. Kathawala J.) whereby Petitioner Nos. 2 and 3 were directed to deposit the keys of the Suit Premises in the present matter with the Ld. Prothonotary and Senior Master. A copy of this order has been attached at Page 46 of the Writ Petition.

5. The above factual position shows that there was dispute going on between the partners of the Petitioner No.1 i.e. Defendant No.1 and in fact the keys of the premises have been deposited in this Court on 4th May 2018, and the keys were handed over on 25th April 2023 to the Petitioners under the Orders of this Court passed in Commercial Arbitration Petition No. 314 of 2017 and Suit No. 340 of 2018. Thus, sufficient cause is made out.

6. In view of above facts, Mr. Somnath Vora, learned Counsel along with Mr. Suresh Gupta have taken instructions from the authorised signatory of the Respondent and state that they have no objection if the impugned Orders are set aside, if heavy cost is imposed and apart from that the arrears of rent along with interest of Rs.12,70,792/- be directed to be paid to the Respondent. As already noted hereinabove, there is sufficient cause shown for allowing applications being Exh. Nos. 20, 21 and 22 filed in R.A.E. and R. Suit No. 255 of 2019.

7. Accordingly, the Writ Petition is allowed in terms of prayer clause (a), which reads as under:

“a. that this Hon'ble Court in its Jurisdiction and powers under Article 227 of the Constitution of India, may issue a writ of Certiorari or any other writ, order or direction call for record and proceedings of Revision Application Nos. 39, 40 and 41 of 2024 filed in Exhibit No.20, 21 and 22 respectively in R.A.E & R Suit No. 255 of 2019 decided by the Appellate Bench of the Court of Small Causes, Bombay, Court Room No.1 and quash and set aside the Orders dated 02nd May 2024 passed in Revision Application Nos.39, 40 and 41 of 2024 filed in Exhibit Nos. 20, 21 and 22 in R.A.E & R Suit No. 255 of 2019 and 04th November 2023 passed in Exhibit No.20, 21 and 22 in R.A.E & R Suit No. 255 of 2019.”

8. The Petitioners to pay cost of Rs.2,50,000/- within a period of 15 days from today to the Respondent. The Petitioners have already deposited a sum of Rs.1,00,000/- in this Court pursuant to the Order dated 4th December 2024 passed by a learned Single Judge in this Writ Petition. The Respondents are allowed to withdraw the said amount deposited in this Court alongwith accrued interest. The Petitioner will pay balance amount of Rs.1,50,000/- to the Respondent within a period of 15 days.

9. Mr. Dhruva Gandhi, learned Counsel appearing for the Petitioners on instructions states that the amount of arrears of rent including the interest i.e. Rs.12,70,792/- will be paid to the Respondents within one month from today. The said payment will be without prejudice to the rights and contentions of both the parties.

10. As far as prayer clause (c) in Exhibit 22, application is concerned, the Petitioner is at liberty to file fresh application before the learned Trial Court. It is clarified that Exhibit 22 application is allowed only as far as arrears are concerned, and as far as the permission to deposit monthly rent from 1st January

2025, the Petitioners are at liberty to file fresh application before the learned Trial Court. It is clarified that all the contentions in that behalf are expressly kept open.

11. Accordingly, the application filed by the Petitioner being Exhibit Nos. 20, 21 and 22 respectively in R.A.E. and R. Suit No. 255 of 2019 are allowed in above terms.

12. The Writ Petition is disposed of in above terms.

BHALCHANDRA
GOPAL DUSANE

(MADHAV J. JAMDAR, J.)

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