

(2023) 09 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No.12368 Of 2022

Krishnakumar Hariprasad Pandit And Others

APPELLANT

Vs

Rasila Nandlal Bhatt And Others

RESPONDENT

Date of Decision : 21-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2023) 09 BOM CK 0029

Hon'ble Judges : Abhay Ahuja, J

Bench : Single Bench

Advocate : Anilkumar K. Patil, Sonal Naik, Apurva Gupte, Parth Jasani, Purnanand

Final Decision : Dismissed

Judgement

Abhay Ahuja, J

1. This Petition filed under Article 227 of the Constitution of India impugns the judgment and order dated 11th November 2021 passed by the Small Cause Court, Mumbai, dismissing the application filed below Exhibit 42 in RAE Suit No.491/839 of 2012 for striking off defence of the Respondents, who are the original Defendants in the suit and also allowing the application filed by the Respondents below Exhibit 49 in the said suit to deposit permitted increases and additional Municipal taxes in the said suit by another order of the same date.

2. The Petitioners are heirs and legal representatives of original deceased Plaintiff. The Petitioners claim to be the owners and landlords of the property known as Vimal Cottage, bearing House No.41, situated at S.V. Road, next to Sapna Building, Vile Parle West, Mumbai-400 056. The Respondents are the statutory tenants of Petitioners in respect of a unit comprising of six rooms situated in the said building, being the heirs and legal representatives of deceased tenant Rasila Nandlal Bhatt. The said unit/premises is hereinafter referred to as the "suit premises".

3. Mr. Anil Kumar Patil, learned Counsel for the Writ Petitioners, has submitted that since the Respondents had been in arrears of rent due from 1st November 1999 and permitted increases from 1st November 1974 and were not ready and willing to pay the same though demanded several times and also because the Petitioners required the suit premises for their own use and occupation, reasonably and bonafide, that RAE Suit No.491/839 of 2012 came to be filed against the Respondents on various grounds including default in payment of arrears of rent, permitted increases and taxes, breach of terms of tenancy, committal of acts of waste and other grounds to which written statements have been filed. Issues have also been framed on 1st July 2014. Petitioners were allowed to be substituted in place of the deceased Plaintiff by order dated 3rd August 2016.

4. Learned Counsel for the Petitioners would submit that earlier the Respondent No.2 had taken out an application for deposit of arrears of rent in the Court under Exhibit 34 alleging that payment of rent was not accepted by the Petitioners and the following order was passed on 18th April 2018 :

" ORDER

Heard.

The plaintiff has claimed rent @ of Rs.335/- p.m. on date of filing the suit.

Hence defendant to deposit arrears of rent from 1st October 2015 till May 2018 at the rate of Rs.335/- p.m. with 4% p.a. increase and this share of taxes and water bills by next date. The Defendant shall proceed to deposit the monthly rent on or before 10th of every month and the taxes and water bills as and when they fall due till disposal of the suit."

5. Learned Counsel submits that the Respondents filed an Application for condonation of delay in depositing the rent and for extension of time to comply with the order dated 18th April 2018 which was allowed on 14th January 2019.

6. Learned Counsel would submit that the Defendants deposited rent till September 2019. Learned Counsel would submit that the Respondents failed to pay the arrears of Rs.5003.42 in breach of the order dated 18th April 2018. That, the Respondents not only delayed in payment of rent but also failed to pay additional property taxes and permitted increases pursuant to the order dated 18th April 2018. The Plaintiffs viz. the Petitioners herein, therefore, filed the application for striking off defence of the Defendants on 26th April, 2018. It was the case of the Petitioners that the Respondents had deposited a lesser amount as per their calculation, and therefore, the defence be struck out.

7. Learned Counsel would also submit that in reply to the said application, the Respondents have falsely stated in paragraph 1(e) of the reply dated 25th June 2019 that no orders were passed in respect of the additional amounts to be paid by the Respondents on account of Municipal taxes whereas the order dated 18th April 2018 as can be seen clearly refers to the same, and therefore, the

impugned order rejecting Petitioners' application for striking off the defence should be set aside.

8. Referring to the impugned order, learned Counsel for the Petitioners would submit that, therefore, in line with the decision of the Hon'ble Supreme Court in the case of Balgopal Maheshwari and Others vs. Sanjeev Kumar Gupta (2013) 8 Supreme Court Cases 719 as well as of this Court in Bhimrao Laxmanrao Nihare vs. Natwarlal Ratansi Thakkar 2003 (4) ALL MR 249 , the defence of the Respondents be struck off.

9. Learned Counsel would submit that the Small Causes Court has presumed that the Defendants are not persistent defaulters although they are clearly in violation of the order dated 18th April 2018 of the Small Cause Court, and therefore, the said order deserves to be set aside, in view of the aforesaid decisions of the Hon'ble Apex Court and this Court.

10. Mr.Patil, learned Counsel, also draws the attention of this Court to Order XV-A of the Code of Civil Procedure ('CPC') as applicable to the State of Maharashtra and would submit that the said provision clearly provides that this Court may strike off the defence in the event of default of making deposit in any suit for eviction.

11. On the other hand, Ms.Gupte, learned Counsel for the Respondents, would firstly submit that the Respondents have paid the entire rent until September 2023 and draws the attention of this Court to a receipt issued by the Court of Small Causes at Mumbai at page 316, at the rate of Rs.335/- per month with 4% per annum increase, albeit late, but the same was permitted pursuant to order dated 14th January 2019 which condoned the delay in deposit of amount of rent as per order dated 18th April 2018 and allowed the Respondents to deposit the rent. As far as the share of taxes and water bills is concerned, which the Petitioners have argued have not been paid, learned Counsel would firstly submit that the said bills and taxes were to be submitted by the Petitioners and only then the Respondents could make payment of the same. Learned Counsel would further submit that, infact, the Respondents, as recorded by the Small Cause Court in paragraph 8 of the order below Exhibit 49 have deposited arrears of rent along with cheque of Rs.78,119/- which is not disputed by the Petitioners and draws the attention of this Court to page 339 in support of her contention. Learned Counsel for the Respondents would, therefore, submit that the Petition deserves to be dismissed and the suit pending in the trial Court be proceeded with.

12. Ms.Gupte points out that the impugned decisions clearly hold that the Petitioners could not point out what was the increase in Municipal taxes and also that the Respondents have made payments and deposited the same till September 2023, and therefore, the Small Causes Court has correctly held that the Respondents are not persistent defaulters. Learned Counsel submits that the decisions relied upon by the learned Counsel for the Petitioners do not assist the

case of the Petitioners in as much as in the present case the Court has not found that there was any default in the payment of arrears of rent.

13. Having heard the learned Counsel and having considered the rival contentions, I do not find any error or illegality or perversity in exercise of jurisdiction by the trial Court in passing the two impugned orders dated 11th November 2021. As can be seen from the receipt issued by the Small Causes Court, Mumbai, the Respondents have paid the entire rent until September 2023 at the rate of Rs.335/- per month with 4% increase. Admittedly, the Petitioners have not provided any details of Municipal taxes for enabling compliance by the Respondents.

No fault, therefore, can be found with the Small Causes Court when it holds that the Petitioners could not point out what were the increase in Municipal taxes and also that the Respondents had made payments till September 2023, and that, the Respondents are not persistent defaulters.

14. Mr.Patil has relied upon Order XV-A of the CPC. For the sake of convenience Order XV-A of the CPC is quoted as under :,

" ORDER XV-A

STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, the Defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or license fee claimed in the suit as the Court may direct. The Defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule(2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the Defendant or his Advocate to show cause as to why the defence should not be struck off and the Court shall consider any such cause, if shown in order to decide as to whether the Defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this Rule shall be paid to the plaintiff-lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the Plaintiff and it shall not also be treated as a waiver of notice of termination.

Explanation : The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this Rule.

(Emphasis supplied)”

15. In the facts of this case, Mr.Patil’s reliance on Order XV-A of the CPC would not be of much assistance as rent has already been deposited in advance. Further, what is observed from Order XV-A of the CPC is that it is only in the event of default in making the deposit of rent that the defence can be struck off, which is not the case here. Nowhere the provision refers to Municipal taxes or water bills and therefore, the said provision would not be applicable to the case of the Petitioners. Also, the reliance, therefore, by the learned Counsel for the Petitioners on the decisions in the case of *Balgopal Maheshwari and Others vs. Sanjeev Kumar Gupta* (supra) and *Bhimrao Laxmanrao Nihare vs. Natwarlal Ratansi Thakkar* (supra) would not be of any assistance in the facts of this case as the said decisions are clearly distinguishable.

16. The impugned orders, therefore, do not require any interference of this Court. The Writ Petition is hereby dismissed. The trial Court is directed to hear and dispose of the suit, preferably within a period of one year from the date of uploading of this order.