

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3132 OF 2009

Bhagwandas Ramdas (Deleted)
Mathuradas Morarji & Anr. Petitioners
Vs.
Vaza Poil Mohamed & Anr. Respondents

Mr. R.D. Vora for the Petitioners.

Mr. S.L. Singh i/b. M/s. Khilnani & Co.
for Respondent Nos.1 & 2.

CORAM : A.S. OKA, J.

DATE : 30TH SEPTEMBER, 2009.

PC. :

1. Submissions of the learned Counsel appearing for the parties were heard on the earlier date. Today the Petition is kept for dictation of the judgment. The challenge in this Writ Petition under Article 227 of the Constitution of India is to an order dated 5th February,

2009 passed by the learned Judge of the Court of Small Causes on an application made by the petitioners. The petitioners have filed a suit for eviction against the respondents on various grounds under the Maharashtra Rent Control Act, 1999. The grounds of eviction are carrying out additions/alterations to the suit premises, the change of user and subletting. After the trial commenced, an application was made by the petitioners at Exhibit "46" seeking a direction against the respondents to deposit arrears of rent from 1st August, 2004 to 30th September, 2008 amounting to Rs.1,21,039.50, more particularly set out in Annexure "A" to the said application. A prayer was also made in the said application for directing the respondents to pay further rent from 1st October, 2008 onwards @ Rs.2,359.15 per month. The said application was opposed by the respondents by filing a reply of the first respondent. It was contended that the petitioners have not annexed the copies of the municipal assessment

bills and other bills which are referred to in Exhibit "A" annexed to the application. It was contended that the entire calculation was excessive and exorbitant. It was contended that a sum of Rs.1,00,000/- in cash was collected by the petitioners from the first respondent. It was contended that the petitioners have not paid the municipal taxes. In the impugned order, the learned Judge observed that in the plaint there are no averments to the effect that the respondents were in arrears of rent. The learned Judge observed that notwithstanding the provisions of Order XV-A of the Code of Civil Procedure, 1908 (hereinafter referred to as "the said Code) as amended for the State of Maharashtra, the petitioners are not entitled to an order of deposit. Paragraph 12 of the impugned order shows that the application was rejected only on the ground that the petitioners have not pleaded in the plaint that the respondents were in arrears of rent.

2. The learned Counsel appearing for the petitioners submitted that the impugned order is perverse and the same completely defeats Order XV-A of the said Code. He invited my attention to the reply filed by the respondents to the said application and contended that the same is vague and there is no specific case made out that the respondents have cleared the arrears of rent. He submitted that no material has been produced to show that the sum of Rs.1,00,000/- has been paid.

3. The learned Counsel appearing for the respondents had filed an affidavit in reply. It is contended that the claim made by the petitioners from August, 2004 was barred by law of limitation. It is contended that considering the averments made in the plaint, the petitioners are not entitled to a direction against the respondents to deposit the amount. Alongwith the reply, a statement has been tendered on record by the respondents

contending that a sum of Rs.22,514/- has been paid by the respondents to the Society on account of maintenance and other charges in respect of the suit premises. It was stated that a sum of Rs.30,000/- has been paid towards the repairing charges which were payable by the petitioners. It is contended that a sum of Rs.8,000/- has been spent on external plastering of the walls. It was contended that a sum of Rs.1,00,000/- in cash has been paid to one Bhagwandas Ramdas (since deceased).

4. I have carefully considered the submissions. It will be necessary to consider the Order XV-A of the said Code which reads thus :

"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 licence 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 the waiver of notice of termination."

5. The present suit is filed by the lessors against the lessees. Rule 1 of Order XV-A will apply to such a suit for eviction even if there is no prayer made in the suit for recovery of arrears of rent. Application invoking Order XV-A of the said Code is not a recovery suit and, therefore a tenant cannot be heard to say that he cannot be directed to deposit arrears which have become barred by law of limitation. On plain reading of Rule 1 of Order XV-A, as a condition for obtaining an order of deposit, it is not necessary for the plaintiff-landlord to aver in the plaint that the respondent is in arrears of rent. Therefore, the entire approach of the learned trial Judge while dealing with the said application appears to be perverse. The application has been rejected without considering the merits thereof on the ground that there is no pleading in

the plaint about arrears of rent. The Court has not at all dealt with the material averments made in the application made by the petitioners. According to the calculations submitted by the petitioners, the respondents had not paid rent with effect from 1st August, 2004. Exhibit "A" annexed to the application at Exhibit-46 filed by the petitioners contains the break-up of the amounts payable by the respondents. According to the petitioners, a sum of Rs.2,339.18 per month is payable towards the rent, property taxes, repairs, cess, water charges, land abolition charges etc. As far as the amount payable by the respondents is concerned, the trial court has not made any adjudication. The respondents have claimed that the amount claimed is exorbitant. Therefore, as far as the amount payable by the respondents is concerned, a proper adjudication will have to be made by the trial court. However, I find that in the reply filed by the respondents, there is no specific assertion that from 1st August, 2004,

onwards the rent has been paid. The issue regarding quantum of taxes etc. payable by the respondents will have to be considered by the Trial Court. It must be stated here that the respondents have claimed that they have paid various amounts such as maintenance charges, repair charges and plastering charges. The respondents are relying upon documentary evidence on record. However, there is absolutely no evidence of payment of a sum of Rs.1,00,000/- in cash. As per the prayer made by the petitioners in the application on which the impugned order has been passed, upto the period ending with 30th September, 2008 a sum of Rs.1,21,039.50 was payable by the respondents. As the exact liability of the respondents will have to be worked out on the basis of the documents on record, for the time being, a direction will have to be issued to the respondents to deposit a sum of Rs.1,00,000/- with the trial court. The application will have to be remanded to the trial court for fresh

consideration. In the meanwhile, the respondents will have to deposit rent @ Rs.2,359.15 from October, 2008 onwards.

6. It is made clear that the application made by the petitioners under Order XV-A is maintainable and the petitioners are entitled to seek direction of deposit of the rent notwithstanding the fact that there are no averments made in the plaint regarding arrears of rent and notwithstanding the fact that the arrears are claimed from 1st August, 2004.

7. Hence, I pass following order :

"O R D E R"

- (i). The impugned order dated 5th February, 2009 is quashed and set

aside. Application at Exhibit "46" is remanded to the trial court for fresh decision in the light of the observations made by this Court.

- (ii). For the time being, the respondents shall deposit a sum of Rs.1,00,000/- being an ad-hoc amount payable towards the arrears. The said amount shall be deposited by the respondents with the trial court within a period of eight weeks from today. From October, 2008, the respondents shall keep on depositing a sum of Rs. 2,359.15 per month with the trial court on or before 10th day of every calendar month. The withdrawal of the said amounts shall not be

permitted till the disposal of the application at Exhibit "46".

(iii). It is obvious that the aforesaid amounts directed to be deposited by the respondents shall be deposited subject to final order which may be passed by the trial court on application at Exhibit "46". The issue regarding the quantum of the amount payable by the respondents is kept open.

(iv). The learned trial Judge after hearing the parties will decide application at Exhibit "46" afresh as expeditiously as possible.

(v). The Writ Petition is allowed in above terms.

(vi). Hearing of the Suit is expedited.

A.S. OKA, J.