

Order passed below Exh. 38 in Civil Suit No.182/2016

01. Applicant/plaintiff has filed this application for striking out defence of the defendant for not complying with order of this Court dated 22.01.2019.

02. Read the application and say given by defendant as per Exh. 46.

03. It is contended by applicant/plaintiff that he has filed this suit against defendant bank for possession of suit premises and for arrears of rent as per Section 26 of Bombay Provincial Small Causes Court Act. The defendant has appeared in the matter and filed its written statement as per Exh. 12. It is further contended by the plaintiff that he has filed an application at Exh. 25 under Order XV-A for directing the defendant to pay the arrears of rent during the pendency of this suit. After hearing the plaintiff, this Court allowed his application on 22.01.2019 directing defendant to pay the amount of Rs.2,18,67,936.56/- towards arrears of rent and further directed to pay amount of Rs. 6, 61, 531.75/- per month towards revised lease rent. It is further contended that defendant has preferred review application at Exh. 33 against aforesaid order. However, by hearing both parties on merits, this Court rejected application of defendants vide order dated 10.06.2019.

04. It is further submitted by applicant/plaintiff that since 22.01.2019 defendant has deliberately failed and neglected to

deposit the amount of arrears of rent and revised lease rent as per order dated 22.01.2019. The defendant has intentionally contravened the order of this Court and therefore, by this application it is prayed by plaintiff that the defence i.e. written statement filed by the defendant be struck off for non complying order of this Court.

05. Defendant has strongly opposed this application by filing say as per Exh. 46. It is submitted on behalf of defendant that it is going to file appropriate proceeding against the order dated 22.01.2019 passed below Exh. 25. Defendant has already moved application for seeking stay on the operation of the order passed below Exh. 25 and same is pending. It is further submitted that advocate of the defendant did not attend the proceeding in previous dates and therefore, earlier order was passed without hearing of the defendant. He further submitted that there is no conclusive evidence about entire arrears of rent and revised per month rent. Further, there is no evidence regarding the exact area of tenanted premises. The plaintiff has already availed Over Draft loan facility of Rs. 111/- lacs on 29.11.2010 and defendant is regularly depositing amount of rent in the said Over Draft account. Further, defendant is not using major area of the suit premises and therefore, no rent liability can be imposed upon defendant. Lastly, it is prayed by defendant that the application be rejected with cost.

06. Upon perusal of the record, it is seen that this Court has passed order below Exh. 25 on 22.01.2019 directing defendant to pay the arrears of rent and revised lease rent. It has come to my notice that defendant did not pay any amount against said order. It

is pertinent to note that defendant has moved application for review of the order as per Section 114 of C.P.C. however, application of the defendant came to be rejected by this Court.

07. It is submitted on behalf of defendant that he wants to proceed against said order before appropriate forum. However, admittedly there is no stay to this proceeding by any Appellate Court. Therefore, order dated 22.01.2019 is still in force. It is case of the defendant that previously another advocate was engaged on behalf of defendant. He did not attend the Court. This defence is at all not tenable because defendant itself was not diligent in pursuing the said matter. As per Order XV-A of C.P.C. there is specific mentioned that the Court can direct either party to deposit the sum of money and if either party fails to comply with the same then this Court has every power to strike out the defence of the defendant. In the case in hand, defendant did not comply with the order of this Court. Defendant did not give any application for paying the arrears by way of installments. Its review application is already rejected. There is no stay from Higher Court or Appellate Court to this proceeding.

08. Under Order XV-A in the event of any default in making the deposit directed, the Court under Sub Rule (1) of Order XV-A, may subject to the provisions of Sub Rule (2) strike off the defence. Sub Rule (2) provides for service of notice before striking of defence to show cause and the Court after considering any cost relieved the defendant from orders striking of the defence.

09. In view of the discussion made above and considering above legal position, I find substance in the argument on behalf of plaintiff and therefore, it is necessary to strike off defence of the defendant. Application deserves to be allowed. Hence, I pass following order:-

ORDER

- 1- Application Exh. 38 is hereby allowed.
- 2- Defence of the defendant is hereby struck off.
- 3- No order as to costs.

Sd/-

(N. K. Joshi)

Pune
Date : 26.08.2019

5th Addl. Small Cause Judge &
Jt.Civil Judge Senior Division Pune.

I affirm that the contents of this P.D.F. file order is same word for word as per original order.

Name of Steno	: Smt. P.P.Deo (Stenographer Grade-II)
Court Name	: Shri. N.K. Joshi
	: 5 th Addl. Small Cause Judge & Civil Judge Senior Division, Pune
Date of Order	: 26.08.2019
Signed by P. O.	: 26.08.2019
Uploaded on	: 27.08.2019