

CNRMHSCA20010782018

IN THE COURT OF SMALL CAUSES AT MUMBAI

MARJI Application no.139 of 2018

In

RAD Suit No.1022 of 2010

Mrs.Shivangi Shankar and anr.

... Applicants
(Orig.Plaintiffs)

Versus

Reshma Estate Pvt.Ltd.

...Respondents
(Orig.Defendants)

Dharam & Co. , Advocate for Applicants.

Mr.R.S.Champawat, Advocate for Defendants.

Coram :- Bijesh A.Gaikwad
Judge
Court Room No.17
Date :-06.10.2018

ORDER :-

1. This is an application taken out by the Constituted Attorney of the applicants/original plaintiffs for permission to withdraw the amount of rent deposited by them.

2. It is the case of the applicant that the applicants/plaintiffs had filed the suit for permission to deposit the rent and proportionate tax in respect of the suit premises for the period from April, 2010 to March, 2018 @ Rs.1500/- per month as well as proportionate tax @ Rs.187.23 per month. By an order dated 23.09.2011, this Court had permitted the

applicant to deposit the arrears of rent and further permitted to continue to deposit the rent of the suit premises. In pursuance to the order dated 23.09.2011, applicants have been regularly depositing the rent of the suit premises. Till date, an amount of Rs.1,61,974.58 is deposited by the applicants towards the rent of the suit premises. The said suit is partly decreed by an order dated 18.11.2017.

3. Respondents/original defendants, by their advocate's notice dated 27.02.2018 raised demand for payment of arrears of rent total amounting to Rs.7,45,601/- and in pursuance of the applicants' advocate letter dated 28.03.2018, paid the entire arrears of rent of the suit premises as demanded in the aforesaid demand notice. Thus, the applicants have complied with the requisition of said demand notice making reference to the suit pending before the City Civil Court, Mumbai. The cheque of arrears of rent has already been credited in the account of defendants.

4. Since, the arrears of rent of the suit premises have been paid as per the demand made by the defendants, the applicants are entitled to withdraw the amount lying in the court, because the defendants have not withdrawn any amount therefrom. Therefore, applicants/original plaintiffs prayed that they may be permitted to refund deposited by the plaintiffs.

5. The respondents/original defendants remained absent. No reply is filed to this MARJI Application. Therefore, the MARJI application is proceeded without reply.

6. Heard learned advocate for applicants/original plaintiffs. Following points arose for my determination. I have recorded them with my findings thereon, for the reasons to follow, as under :

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether applicants/original plaintiffs have made out the case for permission to withdraw the amount of rent deposited by them ?	Yes
2.	What order ?	As per final Order

REASONS

AS TO POINT NO.1 :-

7. In the Judgment passed by this Court dated 18.11.2017 in RAD Suit No.1022 of 2010, this Court has specifically observed in the clause no.2 of the operative part of the Judgment that plaintiff's request for permission to deposit the arrears of rent of suit premises as sought by them in the plaint for the period from April, 2010 till adjudication of Suit no.4091 of 2003 pending before the Hon'ble High Court is not maintainable and accordingly, rejected the same.

8. It is a matter of record that in view of interim order passed by this Court in same RAD Suit dated 23.09.2011, plaintiffs were permitted to deposit amount alleged to be them as rent and proportionate taxes in respect of suit premises. The applicants/plaintiffs continued to deposit the amount till March, 2018. The said amount is lying idle in the Court.

9. It is contention of the applicants/plaintiffs that subsequent to decision of said RAD Suit, defendants, by their advocate's notice dated 27.02.2018 demanded the arrears of rent in respect of suit premises and accordingly, said demand amounting to Rs.7,45,601/- in total is paid by

them to defendants.

10. In the above circumstances, the amount which is deposited by plaintiffs/applicants in view of directions of this Court dated 23.09.2011, which is neither withdrawn by defendant nor any objection of its withdrawal by plaintiffs/applicants is made by defendant, is needed to be permitted to withdraw by plaintiffs. Considering all above reasons and non contesting of present MARJI Application by defendant, I answer point no.1 in the affirmative and pass following order.

ORDER

(1). Application is allowed.

(2). Plaintiffs/applicants are allowed to withdraw the amount of arrears of rent deposited by them.

Mumbai
Court Room No.17
Date :-06.10.2018

(Bijesh A.Gaikwad)
Judge

Dictated on :-06.10.2018
Transcribed on :-06.10.2018
Checked & Signed on :- 06.10.2018

(Bijesh A.Gaikwad)
Judge