

IN THE COURT OF SMALL CAUSES AT MUMBAI

Order below Exhibit - 18

In

T.E. & R. Suit No.36 of 2019

1. Mr. Hasmukh Jethalal Furia & Ors. ... Plaintiffs

V/s

1. DENA Bank & Anr. ... Defendants

Kusum N. Patel : Ld. Advocate for the Plaintiffs.

Shri. Rajesh L. Shethia : Ld. Advocate for the Defendants.

Coram:- A. S. Atre, Judge

C.R. No. 23

Date : 16/02/2022

Order :

1. The plaintiffs have filed this application for obtaining directions against the defendants to pay the arrears of lease rent.

2. The Defendant No.2 filed reply at Exhibit No.19. The plaintiffs filed the rejoinder at Exhibit No.20.

3. Perused the application, reply and rejoinder.

4. Heard Ld. Advocate for the plaintiffs who informed the Court that the Ld. Advocate for the Defendant No.2 has informed her that her reply be treated as her argument.

5. The plaintiffs state that the defendant No.2 has taken over the assets and liabilities of the defendant No.1 by Notification of Government. The defendants have remained in arrears of payment of monthly lease rent, maintenance charges, property taxes and water charges in respect of

the suit premises. Due to non-payment of maintenance charges, the plaintiffs have received notice from the society about proposed action. The plaintiffs also apprehend some action on the part of society or B.M.C. authority due to non-payment of municipal taxes. The plaintiffs have given the prevailing market rent in Para No.14. The plaintiffs also annexed the letters issued by State Bank of India and Union Bank of India regarding the same. In para No.17 of the application, the plaintiffs have given the details of amount which the plaintiffs are seeking from the defendants.

6. The defendant No.2 in its reply have denied all the contentions in the application except the contents of Para No.4. The defendant No.2 has plainly denied the contents of each and every para in the application. However, no specific defence is raised in the reply.

The plaintiffs in their rejoinder have denied the contents of reply filed by the defendant No.2.

7. I have gone through the letter dt.21/03/2018 issued by the State Bank of India, Mazgaon Circle Branch. In the said letter, the prevailing rent in the said vicinity is shown as Rs.315/- per sq.ft. plus GST. I have also gone through the letter dt.14/02/2018 issued by the Union Bank of India, Mazgaon Branch. In the said letter, the prevailing rent in the said vicinity is shown as Rs.300/- per sq.ft. plus GST. In Para No.17, the plaintiffs are claiming the arrears of rent @Rs.300/- per sq.ft. The maintenance charges are claimed @Rs.5,000/- p.m. The maintenance charges are claimed from 01/02/2018 to 31/01/2020. The suit premises has built up area of 1,000 sq.ft. Therefore, if the monthly lease rent is considered to be Rs.300/- per sq.ft., then it comes to Rs.3,00,000/- per

month. The plaintiffs state that the defendants are in arrears of lease rent from 01/02/2018 to 31/01/2020. Therefore, the total lease rent in arrears is Rs.72 Lakhs. The plaintiffs are also claiming Rs.9,23,467/- towards the arrears of municipal property taxes and water charges upto the date of filing of the suit. It is to be noted that the defendant No.2 has plainly denied all the averments in the application. There is no positive assertion of any fact on the part of defendant No.2. Admittedly the suit premises is in possession of the defendant No.2. Therefore, the defendant No.2 has to bare the expenses sought for by the plaintiffs.

8. The present suit is filed in the year 2019. On perusal of the record, it transpires that the defendants have not placed on record any documents to show that they have paid the lease rent regularly to the plaintiffs. In such situation, as it is not known that for how much period the present litigation will continue, the rights of the plaintiffs must be protected. Both the letters annexed to the application are issued by reputed banks in the country. I did not see any justifiable grounds to disbelieve the same. If during the course of trial, the defendants succeed to prove that the prevailing market rent is lesser than Rs.300/- per sq.ft., then the defendants may be compensated accordingly. However, as on this date, the plaintiffs being the landlords of the suit premises must be allowed to receive arrears of rent as well as arrears of municipal and other taxes and maintenance charges. The pandemic has adversely affected income of many citizens. Therefore, in such situation, the financial interest of the plaintiffs needs to be protected. The demand of the plaintiffs is legible. Hence, I pass the following order.

: ORDER :

1. The application below Exhibit-18 is allowed with costs.
2. The defendant No.2 shall pay a sum of Rs.73,20,000/- (Rupees Seventy Three Lakhs Twenty Thousand Only) towards the arrears of lease rent @Rs.300/- per sq.ft. from 01/02/2018 to 31/01/2020 and arrears of maintenance charges @Rs.5,000/- p.m. for the same period, within one month from the date of this Order either to the plaintiffs or may deposit the same in the Court.
3. The defendant No.2 shall further pay monthly lease rent of Rs.3,00,000/- (Rupees Three Lakhs Only) from February, 2020 onwards till the conclusion of the trial, within one month from the date of this Order either to the plaintiffs or may deposit the same in the Court.
4. The defendant No.2 shall further pay Rs.5,000/- (Rupees Five Thousand Only) per month from February, 2020 onwards till disposal of the suit, towards maintenance charges in respect of the suit premises regularly, within one month from the date of this Order, either to the plaintiffs or may deposit the same in the Court.
5. As per the submission of the Ld. Advocate for the Plaintiffs, the municipal taxes and water charges are paid by the Defendant No.2 after taking up the application. Hence, no order to that effect.

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6. The Defendant No.2 shall pay regularly the above referred amounts to the plaintiffs or deposit in the Court on 10th day of every month.
7. The amounts herein above ordered to be paid if deposited in the Court by the Defendant No.2, then the plaintiffs will be at liberty to withdraw the same, without prejudice to their rights.

Date : 16/02/2022

**(A. S. Atre)
Judge, C. R. No.23**

Order dictated on : 10/02/2022
Order transcribed on : 14/02/2022
Order checked and signed on : 16/02/2022