

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1430 OF 2015

KASHINATH BHASKAR KADAM

PETITIONER

VERSUS

MAHADEO VISHWANATH MUSALE AND
OTHERS

RESPONDENTS

Mr.S.A.Wakure, Advocate for the petitioner.

Mr.Ajinkya Kale h/f Mr.S.B.Talekar, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 17/02/2015

PER COURT :

1. I have heard the learned Advocate for the petitioner for quite some time and Mr. Kale h/f Mr.S.B.Talekar on behalf of respondent No.1.

2. The petitioner is aggrieved by the condition imposed by the Appeal Court, Principal District Judge, Osmanabad dated 25/03/2014 below Exh.5, which is under challenge in this petition filed on 15/01/2015.

3. Grievance is that, while staying the judgment and decree dated 08/11/2013 in RCS No.50/2012, the condition of payment of compensation of Rs.9,000/- p.m. should not have been imposed. It

is admitted that the said condition has still not been complied with and therefore the execution proceedings initiated by the decree holder are proceeding against the petitioner.

4. Having considered the submissions of the petitioner and having gone through the petition paper book with his assistance, I do not find that the condition imposed in Clause 2 and 3 of the impugned order could be termed as perverse or erroneous. Clause 2 and 3 of the impugned order read as under :-

"2. The judgment and decree passed by Jt.Civil Judge, Senior Division Osmanabad in Reg.Civil Suit No.50/12 on 8/11/2013 is hereby stayed subject to payment of compensation of Rs.9000/- (Rs.Nine thousand only) per month by appellant to respondent No.1 on 10th of every month. In default, the order of stay would be vacated automatically.

3. The appellant is directed to pay the amount of compensation from the date of decree till decision of the appeal. The amount of compensation can be appropriated with the amount of licence fee."

5. The Appeal Court, while considering the appeal of the petitioner / judgment debtor, has considered the aspect of the Leave and License Agreement, having been terminated, appellant/petitioner having not handed over the possession and running a business as a

cloth merchant in the suit premises. The Appeal Court has considered the passage of time and has therefore observed that the compensation of Rs.9,000/- per month as rent from the date of decree 08/11/2013 would be appropriate since the judgment and decree ordering eviction was being stayed pending hearing of the Regular Civil appeal No.347/2013.

6. I do not find that the said condition imposed on the petitioner can be said to have caused grave injustice to the petitioner. The petition, being devoid of merit, is therefore dismissed.

7. At this stage, the petitioner makes a statement that arrears, as have accumulated pursuant to the directions of the Appeal Court, shall be deposited within a period of 6 (six) weeks and Appeal No.347/2013 be expedited. Learned Advocate for the respondents has no objection since this petition is being dismissed. As such, the petitioner is at liberty to comply with the statement made before this Court. In the event, the said amount is deposited, the learned Appeal Court shall decide RCA No.347/2013, as expeditiously as possible and preferably on or before 31/12/2015.

(RAVINDRA V. GHUGE, J.)