

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.242 OF 2013
IN
FIRST APPEAL NO.73 OF 2013

Hanuman Kaka Satoskar (deceased)

Through Lrs.

...Applicants

V/s.

Rajesh Prabhakar Narkar & Ors.

...Respondents

Mr. D. S. Sawant i/b. R. A. Arolkar for the Applicants.

Mr. P. M. Gaonkar for the Respondent Nos. 1 to 3.

CORAM: K.K. TATED, J.

DATED : APRIL 10, 2015

PC. :

1. Heard the learned counsel for the parties. This Application is preferred by the Defendant for stay of the operation and implementation of the impugned judgment and decree dated 6/12/2012 passed by the Trial Court in S.C.Suit NO.1926/2010 directing the Applicant to handover vacant and peaceful possession of the suit business premises i.e. Shop Nos.1 and 2 in building known as 'Kedarling Biscuit Shop' @ 'Kedarling Biscuit Store' in Shop Nos.1 and 2, Building known as 'Suparibaug Mansion', now known as Nirmala Nivas, Poybavdi Vithal Chavan Marg, Parel, Mumbai – 400012.

2. The appeal is pending for final hearing, as such, clause (2) of the impugned decree is required to be stayed. Clause (2) reads thus:

2. Defendants do handover vacant and peaceful possession of suit business i.e. 'Kedarling Biscuit Shop' @ 'Kedarling Biscuit Store' in Shop Nos.1 and 2, Building known as 'Suparibaug Mansion', now known as Nirmala Nivas, Poybavdi Vithal Chavan Marg, Parel, Mumbai – 400012.

3. Now the question remains as to how much compensation the Applicant to deposit in court during pendency of the First Appeal No.276/2011.

4. The learned counsel for the Applicant submits that the Plaintiff, at the time of filing the S.C.Suit NO.1926/2010 claimed Rs.300/- pm by way of compensation. He further submits that area of the suit premises is 40 sq.ft. He submits that the suit premises is situated in Parel area. He submits that considering the compensation claimed by the Plaintiffs before the Trial Court, the monthly compensation should not be more than Rs.2000/- pm. He further submits that in a similarly situated area i.e. Lalbaug near Parel, this court, by order dated 16/06/2011 in Civil Application No.418/2011 in First Appeal No.216/2011 held that the occupant should deposit sum of Rs.2000/- pm by way of compensation. On the basis of this submission and the order dated 06/06/2011, the learned counsel for the Applicant submits that during pendency of the present appeal, this Hon'ble Court may fix the compensation of Rs.2000/- pm.

5. On the other hand, the learned counsel for the plaintiff vehemently opposed the present Application. He submits that in the month of December 2012 the decree has been passed by the Trial Court directing the Applicant to handover vacant and peaceful possession of the suit premises. The learned counsel for the Respondent Plaintiffs submits that in Lalbaug area, for a business premises of 1.11 sq.mtr. in a conducting agreement the occupant agreed to pay sum of Rs.15000/- pm. In support of this submission, the learned counsel for the plaintiff relies on the conducting agreement dated blank day of February 2010

between Ganpat Tukaram Gore and Mohitkumar Shivilal Nirmal. On the basis of this submission and the said conducting agreement the learned counsel for the Plaintiffs submits that the Applicant Defendant be directed to deposit Rs.25,000/- pm by way of compensation.

6. Heard both sides at length. It is to be noted that in the present proceedings the Applicant is in possession of 40 sq.ft. area in Parel since 1956. The Respondent Plaintiffs filed S.C.Suit No.1926/2010 in Bombay City Civil Court, Mumbai in the month of August 2010. In prayer clause (c), the Plaintiffs claimed compensation of @ Rs.300/- p.m. Prayer clause (c) of the said suit reads thus:

(c) This Hon'ble Court may be pleased to order the Defendants to pay monthly compensation at the rate of Rs.300/- per month or at any such rate as may be deem fit by the Hon'ble Court till the suit business is handed over to the Plaintiffs.

7. Considering the submissions made by the learned counsel for the Applicant, order dated 06/12/2012, conducting agreement of blank day of February 2010 and prayer clause (c) of the suit, I am of the opinion that in the interest of justice, the Applicant - Defendant to deposit sum of Rs.3500/- pm in the Trial Court, by way of compensation.

8. Hence, the following order :

a. There shall be stay to the execution and implementation of clause (2) of the operative order of the impugned judgment and decree subject to condition that the Applicant to deposit in the Trial Court sum of Rs.3500/- pm. from December 2012 till disposal of the First Appeal.

- b. The Applicant to deposit arrears of compensation in the Trial Court within 2 months from today.
- c. The Applicant shall continue to deposit sum of Rs.3500/- pm from May 2015 on or before 10th of each month in the Trial Court till hearing and final disposal of the appeal.
- d. The Applicant to pay compensation directly to the Respondent Plaintiff and/or in the Trial Court as per clause (3) of the impugned judgment and decree dated 06/12/2012 till hearing and final disposal of the First Appeal. Clause (3) reads thus:
 - “3. Defendants do pay a royalty amount of Rs.300/- pm to the Plaintiffs since prior to 3 year of the filing of the suit till the delivery of possession to the Plaintiff of the suit property.”
- e. There shall be further condition that the Applicant shall not create any third party right, title and interest in respect of the suit premises till the hearing and final disposal of First Appeal.
- f. The Tribunal is directed to invest the entire amount deposited by the Applicant towards compensation @ Rs.3500/- pm in a fixed deposit account of any Nationalized bank, initially for a period of three years which will be renewed from time to time till hearing and final disposal of the First Appeal.
- g. If compensation as per clause (3) of the impugned judgment and decree is deposited in the Trial Court by the Applicant, the Respondent Plaintiff is entitled to withdraw the same without furnishing any security.
- h. Civil Application stands disposed off accordingly.
- i. Rule is made absolute in terms of prayer clause (d).

(K.K. TATED, J.)