

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.659 OF 2015

Smt. Shila Mohanlal Dingra and Ors.] ... Petitioners

Versus

Mrs. Renu Mohan Malkani and Anr.] ... Respondents

Mr. Chandrabhan Mohanlal Dingra, Petitioner No.2, present in person.
Mr. R. R. Mishra a/w Mr. Ajay Mishra for Respondent No.1.

WITH
WRIT PETITION NO.2242 OF 2015

Smt. Renu Mohanlal Malkani.] ... Petitioner

Versus

Smt. Shila Mohanlal Dingra and Ors.] ... Respondents

Mr. R. R. Mishra with Mr. Ajay Mishra for Petitioner.
Mr. Chandrabhan Mohanlal Dingra, Respondent No.2, present in person.

CORAM :- M. S. SONAK, J.
DATE :- JULY 24, 2015

P. C. :-

1. This order shall dispose of Writ Petition No.659 of 2015 and Writ Petition No.2242 of 2015.

2. Rule in both the petitions.
3. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
4. Both the Writ Petitions challenge orders dated 15/10/2013 and 26/11/2014 made by the Small Causes Court (Trial Court) and the Division Bench of the Small Causes Court (Revisional Court). The grievance of the Petitioner in Writ Petition No.2242 of 2015 (occupant of the suit premises) is that the Trial Court erred in directing the payment of Rs.3,000/- (Rupees Three Thousand Only) per month to the purported owner and the Revisional Court erred in dismissing the Revision Application; whereas the grievance of the Petitioners in Writ Petition No.659 of 2015 (purported owners) is that the direction should have been for payment of at least Rs.23,000/- (Rupees Twenty Three Thousand Only) per month by way of compensation for occupation of the suit premises.
5. Mr. R. R. Mishra, learned Counsel for the occupant, at the outset, submitted that the direction for payment of Rs.3,000/- was made on the basis of the statement made on behalf of the occupant in Notice of Motion No.696 of 2004 in Suit No.659 of 2004 which is recorded in the order dated 03/12/2014. The said statement was clearly made without prejudice to the rights and contentions in the suit pending in the Small Causes Court. Accordingly, the Trial Court was required to consider whether any direction for payment could at

all have been made in the facts and circumstances of the present case. Mr. Mishra further submitted that in Writ Petition No.1150 of 1996 instituted by the occupant against the BEST, this Court, in its order dated 23/08/1996, has recorded a finding on fact that it is the occupant who had made payment towards purchase of the suit premises by cheque. In the light of this position, Mr. Mishra contended that there was absolutely no justification to direct the occupants to pay an amount of Rs.3,000/- per month to the purported owner. Mr. Mishra submitted that inasmuch as these vital factors have not been considered by the two Courts, the impugned orders are without jurisdiction and are liable to be set aside.

6. Mr. Chandrabhan Mohanlal Dingra, Petitioner No.2 in Writ Petition No.659 of 2015 and Respondent No.2 in Writ Petition No.2242 of 2015, who appears in person, has submitted that the occupant had filed RAD Suit No.4704 of 1987 seeking declaration that she is the tenant in respect of the suit premises. The same was dismissed on 12/02/2007. The appeal against the same was also dismissed by the Appellate Bench of the Small Causes Court on 01/07/2009. There was no further challenge to the decision dated 01/07/2009. Accordingly, Mr. Chandrabhan Dingra submitted that it is too late in the day for the occupants to still insist that they are the tenants in respect of the suit premises. On the same basis, it is also too late in the day for the occupants to insist that they are the owners in respect of the suit premises. Mr. Chandrabhan Dingra further pointed out that relevant material in the form of leave and license

agreement were placed on record before the Trial Court which indicate that the compensation in respect of the suit premises would be in the range of Rs.23,000/- per month. The Trial Court as well as the Revisional Court have not at all considered such material and merely directed payment of compensation at the rate of Rs.3,000/- per month on the basis that such direction was made by this Court in the aforesaid notice of motion which was disposed of by order dated 03/12/2004. For all these reasons, Mr.Chandrabhan Dingra submitted that the impugned orders to the extent they deny the purported owner compensation at the rate of at least Rs.23,000/- per month, are required to be interfered with.

7. The rival contentions now call for my determination.

8. At the outset, it must be made clear that the observations in the impugned orders or for that matter, any observations that may be made in this order, are only *prima-facie* and therefore the trial Court need not be influenced by them at the stage of final disposal of the proceedings. The observations are only made in the context of the application made by Mr. Chandrabhan Dingra seeking, *inter alia*, directions for payment of compensation during the pendency of the suit seeking decree of eviction.

9. At least at the *prima-facie* stage, it is not possible to accept Mr. Mishra's contention that it is the occupants who have paid the BEST all payments by cheques towards the hire purchase of the suit

premises. The observation, in order dated 23/08/1996 in Writ Petition No.1150 of 1996 was in the context of eviction proceedings initiated by the BEST. That was not a proceeding to decide the *inter se* rights between the occupants and Dingras. Admittedly, it is Mr.Mohanlal Dingra who was the employee of the BEST and the allotment of the suit premises, whether on hire purchase basis or otherwise, was made in favour of Mr. Mohanlal Dingra. The occupant Mrs. Renu Malkani is the sister of Mr. Mohanlal Dingra. In any case, the observations in the order dated 23/08/1996, shall have to be in the context of RAD Suit No.4704 of 1987 instituted by the occupant against the Dingras. The declaration was declined by the Trial Court and the Appeal Court, by its order dated 01/07/2009, has dismissed the occupant's appeal. In the Judgment and Order dated 01/07/2009, the occupant had contended that though the amounts towards hire purchase charges for the suit premises were deducted from the salary of Mr. Mohanlal Dingra, the occupant would reimburse this amount in cash and further it is the occupant's who have been paying charges towards maintenance of society dues. This contention was not accepted by the Appeal Court, *inter alia*, on the ground that there is absolutely no evidence in respect of the same. In these circumstances, at least *prima facie*, it cannot be accepted that it is the occupants who have made the payment towards hire and purchase of the suit premises and therefore no directions for payment of compensation can be made as against them.

10. The two Courts, have not at all considered the material on record in the context of determining the reasonable compensation. The Trial Court has merely based its determination upon order made by this Court on 03/12/2004. The Dingras had produced on record a leave and license agreement dated 05/10/2012 in respect of Flat No.B-18/14, Best Sanman Co-Operative Housing Society Ltd., Best Nagar, Phase II, Goregaon (West), Mumbai – 400 014, indicating the compensation at Rs.18,500/- (Rupees Eighteen Thousand Five Hundred Only) per month. This apartment is in the building adjacent to which the suit premises are located. This apartment was on the third floor where the suit premises are on the first floor. The suit premises admeasure around 500 sq.ft. and are residential premises. Mr. Chandrabhan Dingra submits that presently the market rent in respect of apartments in the colony would be around Rs.23,000/- per month.

11. In the absence of any material placed on record by the occupants, it was incumbent upon the two Courts to take into consideration the material on record by the purported owner. The Hon'ble Apex Court, in the case of ***Maria Margarida Sequeira Fernandes and Others Versus Erasmo Jack De Sequeira (Dead) Through LRs***¹, has observed thus :

“87. Experience has shown that all kinds of pleadings are introduced and even false and fabricated documents are filed in civil cases because there is an

¹ (2012) 5 Supreme Court Cases 370

inherent profit in continuation of possession. In a large number of cases, honest litigants suffer and dishonest litigants get undue benefit by grant or refusal of an injunction because the Courts do not critically examine pleadings and documents on record. In case while granting or refusing injunction, the Court properly considers pleadings and documents and takes the pragmatic view and grants appropriate mesne profit, then the inherent interest to continue frivolous litigation by unscrupulous litigants would be reduced to a large extent.

88. *The Court while granting injunction should broadly take into consideration the prevailing market rentals in the locality for similar premises. Based on that, the Court should fix adhoc amount which the person continuing in possession must pay and on such payment, the Plaintiff may withdraw after furnishing an undertaking and also making it clear that should the Court pass any order for reimbursement, it will be a charge upon the property.*

89. *The Court can also direct payment of a particular amount and for a differential, direct furnishing of a security by the person who wishes to continue in possession. If such amount, as may be fixed by the Court, is not paid as security, the Court may remove the person and appoint a receiver of the property or strike out the claim or defence. This is a very*

important exercise for balancing equities. Courts must carry out this exercise with extreme care and caution while keeping pragmatic realities in mind and make a proper order of granting mesne profit. This is the requirement of equity and justice.”

12. Applying the aforesaid principles, this is a fit case where occupants i.e. Smt. Renu Malkani and others, (Petitioners in Writ Petition No.2242 of 2015 and Respondents in Writ Petition No.659 of 2015) are directed to deposit before the trial Court an amount of Rs.15,000/- (Rupees Fifteen Thousand Only) effective from 01/11/2013. This is because the Trial Court, by its order dated 15/10/2013, had issued directions for payment of Rs.3,000/- per month. The Dingras shall be entitled to withdraw from the Trial Court compensation to the extent of Rs.10,000/- (Rupees Ten Thousand Only) per month. This shall be subject to the Dingras filing an undertaking before the Trial Court that in case the proceedings are decided against them, then they shall, bring back such amount together with interest at the rate of 6% per annum in the Trial Court, within such period as the Trial Court may direct. The balance amount, shall be invested by the Trial Court in some nationalized bank for the period to be determined by the Trial Court in its discretion. If, in pursuance of the impugned orders, the occupants have already paid an amount of Rs.3,000/- to the Dingras, then they shall be entitled to credit for the same in the matter of deposit of arrears. The arrears to be deposited within a period of six weeks from today. In case there is

breach of compliance, the Dingras shall be at liberty to apply for appropriate orders, including, *inter alia*, appointment of Receiver and/or striking out the claim or defence.

13. Accordingly, Rule is discharged in Writ Petition No.2242 of 2015 and the Rule is made absolute to the aforesaid extent in Writ Petition No.659 of 2015. There shall be no order as to costs.

14 At this stage, Mr. Mishra, learned Counsel for Petitioner in Writ Petition No.2242 of 2015, applies for stay for a period of eight weeks. Mr. Chandrabhan Dingra opposes the motion for stay and contents that occupants Smt. Renu Mohanlal Malkani and her family members are not, in fact, staying in the suit premises. Mr. Dingra states that Smt. Renu Malkani resides with her son who is in the media business and daughter-in-law who is a Legal Officer in a limited company. This position is disputed by Mr. Mishra. The order made today, directs deposit of compensation. Six weeks time has already been granted to deposit arrears. In such circumstances, the occupants have sufficient time to take recourse against this Judgment and Order. The motion for stay is therefore denied.

15 All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)