

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1167 OF 2014
IN
FIRST APPEAL NO.969 OF 2009**

Mrs.Catharine John D'souza (Dead)
through legal heirs
Mary Juran Keni and Ors. .. Applicants

IN THE MATTER BETWEEN

Triza Joseph D'souza and Ors. .. Appellants

vs

Mrs.Catharine John D'souza (Dead)
through legal heirs
Mary Juran Keni and Ors. .. Respondents

Mr.A.J.Almeida for the applicants

Mrs.Nilima Sanglikar for the respondents

CORAM : K.K.TATED, J.
DATED : 16/04/2015

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by plaintiffs for fixing compensation in respect of the suit premises @ Rs.7000 per month and directing appellants defendants to deposit the same in this court.

Few facts of the matter are as under:

3 The plaintiffs filed S.C. Suit No.613 of 1998 in Bombay City Civil Court at Bombay for declaration that the defendants have no right, title and interest or claim in respect of land bearing C.T.S. No.2414 admeasuring 152.6 sq.metres or any part thereof at Village Manori Taluka Borivali, Mumbai Suburban District and also to declare that the occupation of the portion of the land admeasuring 20' x 18' of the CTS No.2414 as unauthorised and illegal and defendants are trespassers. On hearing both the sides, the Trial Court passed judgment and decree dated 2.2.2009 holding that the defendants have no right, title and interest in respect of the suit premises. Operative part of the judgment reads thus:

“ORDER

- 1) Suit is decreed with costs.
- 2) It is hereby declared that defendants have no right, title, interest or claim in respect of C.T.S.No.2414 admeasuring 152.6 sq.mt. or ay part thereof, situated at Village Malwani and occupation of the portion of C.T.S. 2414 and construction of 20' x 18' by the defendants is unauthorized and illegal and defendants are the trespassers.
- 3) Defendants are hereby restrained permanently from entering or trespassing upon the suit land C.T.S.No.2414 by themselves or any other person on

their behalf and disturbing possession of the plaintiff over it.

- 4) Defendants are hereby directed to remove the illegal construction of structure put up on C.T.S.No.2414 and deliver vacant possession of the land to the plaintiff within 2 months from date of decree.
- 5) On failure of the defendants to remove the structure put up on C.T.S.No.2414 and deliver possession thereof, the plaintiff is having liberty to remove the same and get the possession through the court.
- 6) A separate Enquiry for mesne profit be held under Order XX, Rule – 12(c) of C.P.P.
- 7) Decree be drawn accordingly.
- 8) R & Ps be sent to Record Dept.”

4 Being aggrieved by the said judgment and decree dated 2.2.2009 passed by Trial Court the defendant preferred the present First Appeal. The present First Appeal was admitted by this court on 2.12.2011. In the First Appeal, the defendant preferred Civil Application No.1582 of 2009 for stay of the operation and implementation of the judgment and decree dated 2.2.2009 passed by Trial Court. The said Civil Application No.1582 of 2009 was made absolute in terms of prayer clause (a) which reads thus:

“(a) that pending the hearing and final disposal of the above First Appeal execution, effect and implementation of the impugned judgment and decreed dated 2.2.2009 passed

by the learned Trial Judge in S.C.Suit No.613/98 be stayed.”

5 Thereafter, the plaintiffs preferred the present Civil Application. The learned counsel for the plaintiffs submits that the defendants are using the suit premises though there is a decree passed by the Trial Court directing them to hand over vacant and peaceful possession of the suit premises. He further submits that as on today the market value of the suit property is more than Rs.4.0 lacs. On the basis of these submissions the learned counsel for the plaintiffs submits that the defendants should be directed to deposit a sum of Rs.7000 per month as reasonable compensation in court. He further submits that the plaintiffs in Trial Court claimed mesne profit @ Rs.1000 per month for unlawful use of the suit property. He submits that the claim was made by the plaintiffs in the year 1998. He submits that considering the present market value of the land, area where property is situated, defendants may be directed to deposit sum of Rs.7000 per month by way of compensation in this court from the date of judgment and decree passed by Trial Court. In support of this contention the learned counsel for the plaintiff relies on the judgment of the Apex Court in the matter of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.* reported in (2005) 1 SCC 705.

6 On the other hand, the learned counsel for the defendants vehemently opposed the present Civil Application. She submits that the Civil Application itself is not maintainable in law. She submits that when the defendants preferred Civil Application No.1582 of 2009 for stay of the impugned judgment and award passed by Trial Court, at

that time, the plaintiffs have not prayed for any relief to prefer appropriate application for compensation. Hence, the present Civil Application itself is not maintainable. She further submits that considering the area involved in the present proceeding, the claim made by plaintiffs is on higher side. She further submits that in any case, the monthly compensation cannot be more than Rs.1000/- to 1500/-. She further submits that the plaintiffs have not placed on record any documentary evidence to show the present market value of the suit property. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

7 I have heard both the sides at length. It is to be noted that in the present proceeding, the Trial Court by judgment and decree dated 2.2.2009 held that the defendants are occupying the suit premises unauthorisedly. The Trial Court further directed defendants to hand over possession of the suit premises to the plaintiffs. Hence, in view of the judgement of the Apex Court in the matter of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. (Supra)*, plaintiffs are entitled to prefer appropriate application for compensation during the pendency of the present First Appeal. It is to be noted that in the present proceeding, the suit property is situated at Manori, Taluka Borivali, i.e. part and parcel of Mumbai Suburban District.

8 Considering the present market value of the land in the Mumbai Suburban District, additional affidavit filed by the plaintiff dated 6.5.2014 and as in the year 1998 plaintiff claim mesne profit @ Rs.1000 per month, I am of the opinion that during the pendency of the present First Appeal, defendants to deposit sum of Rs.5000 per

month by way of compensation in the Registry of this court. Hence, following order:

- a) Defendants are directed to deposit sum of Rs.5000 by way of compensation for use of the suit property in the Registry of this Court.
- b) Defendants to clear the arrears @ Rs.5000 per month from February, 2009 till April, 2015 within four months from today.
- c) Defendants are directed to deposit compensation @ Rs.5000 per month from May, 2015 in the Registry of this court on or before 10th of each month.
- d) If any two defaults are made by the defendants in depositing compensation @ Rs.5000, liberty granted to the plaintiffs to prefer appropriate application for vacating interim protection granted by this court on 30.7.2009 in Civil Application No.1582 of 2009.
- e) Registry is directed to invest entire amount in fixed deposit of any nationalised bank initially for a period of three years and same be continued till the hearing and final disposal of the First Appeal.
- f) Civil Application is disposed of accordingly.

(K.K.TATED, J.)