

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1795 OF 2014
IN
WRIT PETITION NO. 23 OF 2006

Deepak K. Awatramani and ors. .. Applicants
vs.
M/s. Gannon Dunkerley & Co. Ltd. .. Respondent

Mr. P.S. Dani, Sr. Advocate a/w. Jui Nerurkar for the Applicants.
Mr. Hiralal Thakkar, Sr. Advocate with Mr. S.G. Gokhale i/b Mahesh
Jani and Co. for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 1 JULY 2015.

P.C. :-

1] By this civil application, the applicants who are original respondents in Writ Petition No. 23 of 2006 seek the following reliefs:

(a) This Hon'ble Court be pleased to grant leave to the present Applicants herein to implement the Order dated 12/7/2013 passed in Misc. Application No. 147 of 2004 (Exhibit "B" to this Civil Application) and in pursuance thereof be pleased direct the Respondent herein to pay the said amounts as determined by the said Order to the present Applicants on such terms and conditions as this Hon'ble Court may deem fit and proper;

(b) Any other just, equitable and consequential relief/order may kindly be passed in favour of the present Applicant as this Hon'ble Court may deem fit and proper in the interest of justice.”

2] This Court, by its order dated 6 April 2011 in Writ Petition No. 23 of 2006, at para 10 had observed thus:

“10. In my view, so far as the mesne profits which are concerned prior to the filing of the writ petition in this Court are concerned, it would be appropriate if the Small Causes Court is directed to decide the said application on merits and in accordance with law and the stay granted by the Small Causes Court to the application filed by the Applicants for fixation of mesne profits from the date of filing of the suit is vacated. The Small causes Court shall expeditiously decide the said application and, in any case, within a period of one year. The Small Causes Court, however, shall not implement the order without seeking leave of this Court since the writ petition is pending in this Court.”

3] The Small Causes Court by its order dated 12 July 2013 has determined the mesne profits in the following manner:

Year	Rate (Per Sq.ft., per month in Rs.)	Area (in square feet)	Amount per month (in Rupees)
01.06.2000 to Dec. 2004	90	4674	420660
2005 to 2007	105.00	4674	490770
2008 to 2009	124.00	4674	579576
2010 till delivery of possession	132.00	4674	616968

4] As against the order dated 12 July 2013, the original petitioners have already instituted appeal before Appellate Bench and the same is pending consideration. However, no directions have been issued by the Appeal Court for either depositing or securing the amounts referred to in the order dated 12 July 2013, because, this

Court in its aforesaid order dated 6 April 2011 had already restrained the execution of order of the Small Causes Court determining mesne profit, without seeking leave of this Court since the writ petition is pending in this Court.

5] At this stage, it is not necessary to grant any leave to the applicants in this civil application to execute the order dated 12 July 2013 made by the Small Causes Court, particularly since an appeal against the same is pending before the Appellate Bench. However, the original petitioner, who is virtually securing a restraint upon execution shall have to deposit in this Court the amount as determined in the order dated 12 July 2013. The learned senior counsel appearing for the original petitioner, however, points out that by order dated 6 April 2011, this Court has already determined reasonable compensation at the rate of Rs.5 Lacs per month from the date of Civil Application No. 665 of 2009 and the original petitioner has infact deposited an amount of over Rs.4 Crores as and by way of reasonable compensation.

6] Learned senior counsel appearing for the original petitioner is at least partially right in his submission that necessary credit shall

have to be given for the deposits made by the original petitioner in this Court, in pursuance of the order dated 6 April 2011. However, as noted in the order dated 12 July 2013, mesne profits have been directed in respect of period between 1 June 2000 and upto 2010. There is also further direction for deposit of mesne profits till delivery of possession. Thus, there is no overlapping in entirety between the directions contained in the order dated 12 July 2013 and the order made by this Court on 6 April 2011. Besides, for the period past 2008, mesne profits have been determined at the rate which is in excess of Rs.5 Lacs per month. In these circumstances, the original petitioner shall have to deposit the amount of mesne profits as reflected in the order dated 12 July 2013 , after obtaining due credit for the amounts already deposited by the original petitioner in terms of this Court's order dated 6 April 2011. The balance amount to be determined in this manner shall be deposited by the original petitioner in this Court within a period of eight weeks from today.

7] It is clarified that in case, such balance amount is not deposited within a period of eight weeks from today, then leave shall be deemed to have been granted to the applicants in this civil

application for execution of the order dated 12 July 2013. In the execution proceedings so instituted, however, necessary credit shall have to be given to the amounts deposited in this Court in pursuance of the order dated 6 April 2011.

8] Civil Application is disposed of in the aforesaid terms.

9] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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