

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2255 OF 2007
IN
WRIT PETITION NO. 4898 OF 2005

Ali Akabar Nazarian and ors.

.. Applicants

vs.

Bansilal S. Obhan and ors.

.. Respondents

Ms Jui Nerurkar for the Applicants.

Mr. S.S. Kumbhar a/w. Mr. S.B. Bhagwat for the
Respondent Nos. 3 to 7.

CORAM : M. S. SONAK, J.

DATE : 14 JULY 2015.

P.C. :-

1] By this Civil Application, the applicants who are the petitioners in Writ Petition No. 4898 of 2005, seek leave to deposit arrears of rent, other charges as well as future rent in respect of suit premises from April 2007 onwards in the Small Causes Court at Mumbai and for a direction to the Small Causes Court to accept the same.

2] Writ Petition No. 4898 of 2005 was admitted on 20 September 2005 and interim relief was granted in terms of prayer clause (c) restraining the eviction of the applicants on the basis of eviction decree dated 15 September 2000. The appeal against the eviction decree was dismissed on 3 May 2005. Thus, from the year 2005, the

applicants are in occupation of the suit premises on basis of interim orders granted by the Appeal Court as well as this Court.

3] During pendency of this petition, it appears that the rent, which is hardly Rs.127/- per month was deposited by the applicants before the Small Causes Court. Thereafter, the applicants committed default in payment of rent, as a result of which, the Small Causes Court refused to accept any further rents, until permitted by this Court. Accordingly, the applicants on 25 June 2007 have filed the present Civil Application seeking reliefs as aforesaid.

4] For reasons, which are by no means clear and in any case convincing, no orders were obtained upon this Civil Application upto now, i.e., upto July 2015. The suit premises are ground floor premises in a building known as Jaimahal plot situated at Sion (W) Bombay. The applicants, in fact, ought to have deposited a reasonable compensation in accordance with the rulings of the Apex Court in cases of *Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited*¹ and *State of Maharashtra & anr. Vs. M/s. Super Max International Pvt. Ltd. & Ors.*² The applicants,

1 2005(1) SCC 705

2 2009(5)ALL MR 1001

have failed and neglected even to deposit paltry amount of Rs.127/- per month and have continued in the suit premises right from the year 2005 on the basis of interim orders of the Courts.

5] In the aforesaid circumstances, the applicants are directed to deposit before the Small Causes Court an amount of Rs.10,000/- per month with effect from 1 June 2005 towards reasonable compensation, as a condition for continuing in possession of the suit premises on the basis of interim order granted by this Court. In fact, the premises being situated on ground floor and in a location like Sion (W), would fetch rent at a substantially higher rent. However, since the deposit is being directed with effect from 1 June 2005, i.e., the date on which the appeal against the original eviction decree came to be dismissed, compensation is directed to be paid at the rate of Rs.10,000/- per month. In case, the applicants desire to place any material on record to demonstrate that the reasonable rate in so far as the suit premises is less than Rs.10,000/- per month, they shall be at liberty to do so. Similarly, the respondent-landlord shall also be at liberty to place the material before this Court to seek upward variation. The issue of variation will be considered as and when such material is placed on record by the parties. For the moment,

however, if the applicants desire to avail benefit of interim orders and continue in the possession of the suit premises on the basis thereof, then the applicants to deposit compensation at the rate of Rs.10,000/- per month with effect from 1 June 2005 before the Small Causes Court together with arrears of rent and other charges. The arrears towards rent, compensation at the rate of Rs.10,000/- per month as well as other charges to be deposited by the applicant before the Trial Court on or before 31 August 2015.. The applicants to thereafter continue to pay rent, compensation and other charges on or before 5th day of each succeeding month. The Small Causes Court to permit the deposit of such amounts. In case arrears of compensation and rent are indeed deposited before 31 August 2015, the Small Causes Court to invest the same in some Fixed Deposit Account with Nationalised Bank for an initial period of two years.

6] This permission to deposit arrears of rent and other charges right from the year 2005 is granted without prejudice to the rights of respondent-landlord to seek appropriate orders on the ground of defaults.

7] This Civil Application is disposed of in the aforesaid terms with liberty as aforesaid to both parties.

8] Place the Writ Petition for direction on 8 September 2015, in order to ascertain whether there is compliance.

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

(M. S. SONAK, J.)

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