

THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1138 OF 2015
IN
CIVIL WRIT PETITION NO.4388 OF 2001

Jimmy Darabshaw Adajania.] ... Applicant

Versus

Ajay Sharadprasad Sharma and Anr.] ... Respondents

Mr. Jayesh Mistry i/b RMG Law Associates for Applicant.
Mr. Y. K. Tiwari i/b M/s. K. P. Tiwari & Co. for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- JUNE 18, 2015

P. C. :-

1. This Civil Application seeks recall of order dated 23/04/2015 dismissing the petition for non-prosecution.

2. The order records that the petition was called upon on 09/04/2015, however, neither the Petitioner nor his Advocate were present. Accordingly, the matter was placed on 16/04/2015 under the caption 'For Dismissal'. Although the matter was listed under the said caption and the board was notified well in advance, since neither the Petitioner nor his Advocate appeared on 23/04/2015, the petition came to be dismissed for non-prosecution.

3. In the Civil Application, the learned Counsel for Applicant has stated that on account an unintentional lapse on his part, the matter could not be attended to. There is really no reason to disbelieve the reason as stated and restore the petition.

4. However, quite independent of the aforesaid, it does transpire that the Petitioner, substantially on the basis of interim order made by this Court, continues to be in possession of the suit premises. The order impugned in the present petition holds that the Petitioner is not the protected tenant in respect of the suit premises. The Respondent-landlord, in the year 1999, has already instituted BCCC Suit No.9686 of 1999 which is presently pending before the City Civil Court, seeking eviction of the Petitioner. Further, although a statement was made that compensation of Rs.1,000/- (Rupees One Thousand Only) per month would be paid by the Petitioner directly to the Respondent-landlord, the same has not been paid. It is the case of the Petitioner that such amount was in fact dispatched to the Respondent but it is the Respondent who has refused to accept the same.

5. Be that as it may, the position today is that the Petitioner is a beneficiary of the interim order in the present petition. The Petitioner is in occupation of the suit premises. The Petitioner, towards such occupation, has not really paid any amount to the Respondent-landlord. The suit premises are located in Parsi Colony at Matunga. The Respondent-landlord points out that there is already a

judicial order made in respect of the premises of the said building i.e. C.R.A. No.500 of 2011, determining reasonable compensation at Rs.25,000/-. In these circumstances, ends of justice would be met if the Petitioner, as a pre-condition for enjoying the benefit of the interim order earlier granted as also for restoration of the petition, deposits certain additional amount in this Court. This is on the basis of principle analogous to those expressed by the Hon'ble Apex Court in the cases of *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd*¹ and *State of Maharashtra and Another Vs. Supermax International Private Limited and Others*².

6. Although there is judicial determination in an amount of Rs.25,000/- in respect of the premises in the same building, looking to the facts and circumstances of the present case, including in particular the tax returns of the Petitioner, it would be appropriate if the Petitioner is directed to deposit in this Court a sum of Rs.10,000/- (Rupees Ten Thousand Only) beginning from 31/07/2015. The Petitioner is accordingly directed to deposit in this Court a sum of Rs.10,000/- each month towards compensation for occupation of the premises. The same will abide by final order that may be made in the petition.

7. Besides, there is no reason as to why the proceedings in the civil suit instituted by the Respondent-landlord now pending before the City Civil Court should not proceed. The proceedings were

1 (2005) 1 Supreme Court Cases 705

2 (2009) 9 Supreme Court Cases 772

instituted in the year 1999. Accordingly, the City Civil Court is directed to proceed with the hearing in BCCC Suit No.9686 of 1999. However, the City Civil Court may not pass a final Judgment and Decree, without the leave of this Court. The suit to proceed on the premise that there is no interim relief as against the order impugned in the present petition.

8. Accordingly, this Civil Application is disposed of with the following order :-

- i) The order dated 23/04/2015 is recalled and Writ Petition No.4388 of 2001 is restored.
- ii) The aforesaid, as also the continuance of the interim relief already granted in this petition, shall be subject to the Petitioner depositing in this Court a sum of Rs.10,000/- (Rupees Ten Thousand Only) each month commencing from 31/07/2015 until further orders.
- iii) The City Civil Court is directed to proceed with the hearing in BCCC Suit No.9686 of 1999 on its own merits and in accordance with law. The City Civil Court, however, shall not make the final Judgment and Decree without the leave of this Court.
- iv) Consequent upon the restoration, the interim relief granted by this Court on 15/10/2001 stands revived, subject to the modification as aforesaid.
- v) The arrears at the rate of Rs.1,000/- (Rupees One Thousand Only) to be deposited in this Court on or before

31/07/2015. The Respondent-landlord is permitted to withdraw the said arrears, without prejudice to their rights and contentions.

vi) Civil Application is disposed of accordingly.

(M. S. SONAK, J.)