

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7091 OF 2015

Raphael Ralphy Ezekiel Jhirad .. Petitioner
vs.
ORT India and ors. .. Respondents

Mr. C.N. Chavan for the Petitioner. for the Petitioner.
Ms Ranjana Parikh i/b Divya D. Jain for Respondents.

CORAM : M. S. SONAK, J.
DATE : 11 AUGUST 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] In this petition, the challenge is to the conditions imposed upon the petitioner by the order dated 6 February 2014 for the purposes of stay upon execution of decree dated 17 March 2002 in L.E. & C. Suit No. 132/149 of 2004.

3] The Appeal Court has directed the petitioner to deposit an amount of Rs.25000/- per month by way of reasonable compensation. There is absolutely no reason to interfere with this part of the order. This part of the order is both reasonable as well as based upon the materials on record.

4] The order dated 6 February 2014, however, has declined a stay insofar as the payment of mesne profits is concerned. The learned counsel for the petitioner submits that since the appeal is at large before the Appellate Authority, such a stay ought to have been granted.

5] Ms Parikh, learned counsel for the respondents, submits that the mesne profits is amount to approximately Rs.76 Lacs. In these circumstances, if the petitioner desires a stay upon execution of the decree insofar as the mesne profits are concerned, then the petitioner should deposit the entire amount.

6] By the Order dated 6 February 2014, the stay has been granted to the execution of the decree insofar as eviction is concerned. The discussion in the impugned order, to a great extent, is common to both the aspects of execution of the eviction decree as well as payment of mesne profits. Besides, the petitioner has already deposited an amount of Rs.22 Lacs towards part of the mesne profits. The petitioner has also pointed out the difficulties which he presently faces. Besides, the decree is *ex-parte*, in the sense that the defence of the petitioner was struck off for inability to comply with certain directions for deposit. Upon cumulative consideration of all

these circumstances, it would be appropriate if the execution of the decree even in the matter of payment of mesne profits is stayed until the final hearing and disposal of the appeal. The amount of Rs.22 Lacs deposited by the petitioner before the Small Causes Court shall abide by final orders that may be made by the Appeal Court in Misc. Appeal No. 218 of 2013. Further, it would be appropriate if the appeal itself is directed to be disposed of expeditiously.

7] Accordingly, this petition is disposed of with the following order:

(A) The impugned order dated 6 February 2014 is modified, inasmuch as there shall be a stay even upon execution of the decree for payment of mesne profits. This is on the basis of deposit of Rs.22 Lacs made by the petitioner before the Small Causes Court. This deposit shall abide by final orders that may be made in Misc. Appeal No. 218 of 2013;

(B) The hearing and final disposal in Misc. Appeal No. 218 of 2013 is expedited. The Appeal Court to dispose of this appeal within a period of one year from today.

8] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)