

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.5686 OF 2015

Bata India Limited.] ... Petitioner/
Ori. Defendant

Versus

Bindiya Co-Operative Housing Society]
Limited.] ... Respondent/
Ori. Plaintiff

Mr. S. S. Redij for Petitioner.
Mr. R. D'Souza for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- JULY 02, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
3. On 02/12/2014, the learned Small Causes Court, taking note of the Petitioner's conduct, closed Mesne Profit Application No.6 of 2010 for order, as the Petitioner was not prepared to proceed with the final hearing. The Petitioner thereafter took out an application in the form of Exh.55, seeking in effect recall of the order dated

02/12/2014 and permission to finally argue the matter. By the impugned order dated 24/04/2015, the learned Small Causes Court has rejected the application at Exh.55.

4. Para 9 of the impugned order dated 24/04/2015 reads thus :-

“9. It is clear that inspite of grant of ample and liberal opportunities, the defendant company's counsel has failed to advance argument and also failed to avail of the opportunity to advance argument and is seeking adjournment on the ground that Writ petition is filed before Hon'ble High Court. But as there is no stay of the Hon'ble High Court this court ought to proceed further with the matter. It appears that the defendant company's counsel is reluctant and not interested in argument inspite of grant of ample and liberal opportunities. Therefore, I am not inclined to set aside order dated 2nd December, 2014 and grant permission to the defendant company's counsel to advance argument. The plaintiff society's counsel is at liberty to advance argument. In the light of foregoing discussion, I am inclined to pass the following order.”

5. Perusal of the impugned order does indicate that several opportunities came to be granted to the Petitioner in the course of the proceedings, but for one reason or the other, the Petitioner appeared

bent upon protracting the proceedings. On one occasion, the Petitioner preferred a Writ Petition before this Court but despite the fact that there was no interim relief granted by this Court, went on seeking adjournments before the trial Court, on the grounds of pendency of the petition. The impugned order came to be made, relying upon the conduct of the Petitioner in the course of the entire proceeding which incidentally are for determining the mesne profit.

6. Looking to the circumstances, there is really no reason to interfere with the impugned order. However, in deference to the salutary principle that no person should be condemned unheard, yet another opportunity can be granted to the Petitioner subject, of course, to certain condition including with regard to payment of costs. This is because Petitioner is no longer in possession of the suit premises. The issue which is being determined by the learned Small Causes Court is only the issue of mesne profit.

7. In the aforesaid circumstances, subject to the Petitioner paying costs of Rs.25,000/- to the Respondent herein, the Petitioner, through their learned Counsel, is permitted to advance arguments on 10/07/2015 which is stated to be the next date fixed for arguments by the trial Court in pursuance of the ad-interim order made by this Court on 25/06/2015. The Petitioner herein, as far as possible to conclude the arguments on the said date. If, however, the arguments remain part-heard on the said date, the learned Small Causes Court is requested to grant yet an other date, preferably in immediate

following week, to the Petitioner to complete the final arguments. The learned Counsel for Petitioner, assures this Court that the Petitioner will not take more than two dates i.e. including the date on 10/07/2015 for the purposes of completion of arguments.

8. The Petitioner has already deposit amount of Rs.10,000/- (Rupees Ten Thousand Only) before the learned Small Causes Court. The Petitioner to deposit further amount of Rs.15,000/- (Rupee Fifteen Thousand Only) before the learned Small Causes Court on or before 10/07/2015. The Respondent shall be at liberty to withdraw such amount unconditionally.

9. The Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs other than the aforesaid, in this petition.

10. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)