

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2861 OF 2014
IN
FIRST APPEAL NO.286 OF 2012**

Rajaninath Govind Pataskar (HUF) .. Applicant

Vs.

United India Insurance Company Ltd. .. Respondent

Mr.Aumkar V. Joshi for the applicant

Mr.V.Y.Sanglikar for the respondent

**CORAM : K.K.TATED, J.
DATED : 20/02/2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by plaintiff for withdrawal of the amount deposited by the respondent pursuant to the order passed by this court on 24.02.2014 in Civil Application No.951 of 2012.
- 3 In the present proceeding, the plaintiff filed Special Civil Suit No. 400 of 2004 in the court of 8th Joint Civil Judge, Senior Division, Thane for recovery of Rs.13,55,264/- including rent of Rs.55,460/- and compensation of Rs.2,27,700/- from the defendant. The said suit was decreed by the Trial Court by judgment and decree dated 21.10.2011

and held that the plaintiff was entitled to recover Rs.11,37,260/-.

4 Being aggrieved by the said decree, the defendant preferred the present First Appeal. Same was admitted by this court and is pending for final hearing. In this First Appeal, the defendant preferred Civil Application No.951 of 2012 in which this court by order dated 24.02.2014 directed defendant to deposit entire decretal amount in this court and same was complied by the defendant.

5 The learned counsel for the plaintiff submits that he be allowed to withdraw the amount deposited by the defendant in this court. He submits that the trial court has passed decree in respect of rent amount of the suit premises i.e. flat nos.1 and 2 admeasuring 1200 sq.feet in "Aashish Apartment" of City Survey No.108/4-D, situated at Ram Maruti Road, Panchpakhadi, Thane. He submits that during the years 1994 to 1999 the defendant was paying compensation @ 27,703.50. Thereafter the plaintiff from the year 1999 demanded additional Rs.25 per sq.ft plus 59% of municipal taxes. That demand was refused by the defendant in the year 2004 and therefore, the plaintiff issued legal notice dated 3.5.2004 calling upon the defendant to hand over vacant and peaceful possession of the suit property and also arrears of compensation. Thereafter, the defendant surrendered the suit property on 01.10.2005 they did not pay the compensation as demanded by plaintiff. Hence, he has filed the suit for its recovery.

6 The learned counsel for the plaintiff submits that this Hon'ble Court be pleased to allow the plaintiff to withdraw the said amount. During the pendency of the present First Appeal if this application is not

allowed, irreparable loss and injury will be suffered by the plaintiff.

7 On the other hand, the learned counsel for the defendant vehemently opposed the present Civil Application. He has filed his Affidavit-in-Reply dated 20.2.2015. Same is taken on record. The learned counsel for the defendant submits that admittedly the enhanced compensation demanded by the plaintiff in the year 1999 @ Rs.25 per sq.ft plus 59% of municipal taxes was not accepted by the defendant. Hence, there is no question of paying compensation at enhanced rate. In support of this contention he relies on the judgment of the Apex Court in the matter of *National Sample Survey Organisation and Another vs. Champa Properties Limited and Another* reported in (2009) 14 SCC 451. He particularly relies on paragraph 30 and 31 of the said judgment. He further submits that since the termination notice issued by the plaintiff on 03.05.2004 immediately they surrendered the suit property to the plaintiff on 01.10.2005. He further submits that these facts are not considered by the trial court at the time of passing the impugned judgment and decree. He submits that without any contract for payment of enhanced compensation, the Trial Court has held that plaintiff is entitled compensation in respect of the suit property. He further submits that the plaintiff as per prayer clause (c) of the plaint claimed damages of Rs.55460/- for the period 21.6.2014 till 21.7.2014. He further submits that though the plaintiffs claimed mesne profit @ Rs.30000 per month from the date of filing of suit till recovery of suit premises, same was rejected by the trial court.

8 On the basis of these submissions, the learned counsel for the

appellant submits that applicant has not made out any case for allowing him to withdraw the amount deposited by them. He further submits that if entire amount is withdrawn by the plaintiff, nothing will survive in the present First Appeal which is pending for hearing and final disposal on its own merits. He further submits that even by order dated 24.02.2014 passed by this court in Civil Application No.951 of 2012 court has not granted any liberty to the plaintiff to take out present application for withdrawal of the amount. On the basis of these submissions, the learned counsel for the defendant submits that there is no substance in the present Civil Application and same be dismissed with costs.

9 I have heard both the sides at length. In the present proceeding the plaintiff filed the suit for recovery of the amount including the rent and compensation in respect of the suit property i.e. flat nos.1 and 2 as described hereinabove. Admittedly upto 1999 the defendant paid compensation in respect of the suit property @ Rs.27,703.50 per month. Thereafter from 1999 the plaintiff demanded enhanced compensation by Rs.25 per sq.ft plus 59% of municipal taxes. That demand was rejected by the defendant in the year 2004 and thereafter handed over possession to the plaintiffs on 01.01.2005.

10 Considering these facts, the trial court held that the plaintiff is entitled to recover the sum of Rs.11,37,260/-. Whether the defendant has agreed to pay enhanced compensation Rs.25 per sq.ft plus 59% of municipal taxes from 1999 or not, that can be decided only at the time of final hearing of First Appeal. Hence, authority relied by the

Appellant is not applicable in the facts and circumstances of the present case.

11 Considering the fact that the trial court has passed money decree, I am of the opinion that plaintiff can withdraw the said amount by providing solvent security to the satisfaction of the Registry of this court. Hence, following order:

- a) Plaintiff is allowed to withdraw the amount deposited by the defendant in the Registry of this court with accrued interest, if any by providing solvent security to the satisfaction of the Registry and subject to the outcome of the First Appeal.
- b) Civil application stands disposed off accordingly.
- c) At this stage the learned counsel for the appellant/defendant seeks stay of the order.
- d) Considering the facts and circumstances of the present case, same is rejected.

(K.K.TATED, J.)