

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7202 OF 2015

Jeeten Vishal Dutt Sinha

.. Petitioner

vs.

Ochi Jethanand Ahuja & ors.

.. Respondents

Mr. Shailesh Shah, Sr. Advocate a/w. Mr. Ashish Mehta i/b M/s. Zohair & Co. for the Petitioner.

Mr. Aarshad Shaikh i/b S.D. Prabhu & Co for Respondent Nos.1 to 3.

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] Even otherwise by notice dated 23 July 2015, it was made clear that endeavour shall be made to dispose of this matter finally, at the stage of admission.

3] This petition challenges the order dated 30 June 2015, by which the Additional Commissioner, Konkan Division has declined stay upon the execution of the order dated 15 April 2015 made by the Competent Authority, ordering the eviction of the petitioner as well as direction for payment of compensation till vacant possession of the suit premises is handed over to the respondents.

4] The operative portion of the order dated 15 April 2015 made by the Competent Authority, Konkan Division reads thus:

ORDER

The Application of Applicants is allowed as under:

1. *The Respondent is directed to handover vacant and peaceful possession of the suit premises i.e. Flat No. D-32, Neha Apartments, Juhu Tara Road, Santacruz (West), Mumbai 400 049, to the Applicants.*
2. *The Respondent is ordered and directed to pay the monthly compensation amount of Rs.30,000/- per month from 1.12.2011 to 28.02.2014 to the Applicants.*
3. *The Respondent is ordered and directed to pay double the compensation amount i.e. Rs. 60,000/- per month to the Applicants from 01.03.2014 till the Respondent hand over vacant possession of the suit premises to the Applicants.*
4. *The Applicants are also at liberty to appropriate the security deposit, if any.*

5] As against, the order made by the Competent Authority under Section 24 of the Maharashtra Rent control Act, 1999 (Rent Act), the remedy of Revision is provided before the Additional Commissioner, Konkan Division under Section 44 of the Rent Act. Accordingly, the petitioner has instituted Revision Application No. 203 of 2015, which is pending consideration before the Revisional Authority. By the impugned order dated 30 June 2015, however, the Revisional Authority has declined stay upon the order dated 15 April 2015, as a result of which the petitioner faces the prospect of eviction from the suit premises, even before Revision Application No. 203 of 2015 is heard on merits.

6] Mr. Shailesh Shah, learned senior advocate for the petitioner, submitted that in a matter relating to eviction, if stay is declined, the petitioner will be evicted from the suit premises, even before the Revisional Authority decides the Revision Application on merits. Mr. Shah points out that the petitioner resides in the suit premises alongwith the family members and further the petitioner had made out a *prima-facie* case for grant of stay. The balance of convenience was obviously in favour of grant of such interim relief. Mr. Shah submitted that at the highest some reasonable terms could have been imposed upon the petitioner at the stage of grant of interim reliefs.

7] Mr. Aarshad Shaikh, learned counsel for the respondents, submitted that the Revisional Authority has taken note of the circumstances that the leave to defend was not applied for by the petitioner within the prescribed period and further, the Competent Authority has no power to condone the delay in the matter of seeking leave to defend. On this basis, the Revisional Authority correctly recorded the conclusion that no *prima-facie* case was made out and consequently denied interim reliefs to the petitioner. There was no jurisdictional error in making of the impugned order. Further,

the conduct of the petitioner also does not entitle the petitioner for any interim relief.

8] Mr. Shaikh, learned counsel for the respondents, pointed out that the petitioner has two other apartments in the same building. Further, the petitioner was merely a licensee in respect of suit premises and despite expiry of term of licence and without paying the stipulated increased compensation, the petitioner insists upon continuing in possession of the suit premises. For these reasons, Mr. Shaikh submitted that the impugned order be not interfered with.

9] The rival contentions now fall for my determination.

10] In a matter where eviction order made by the Competent Authority is under challenge, normally, though not invariably, the eviction order is required to be stayed subject to conditions with regard to deposit of reasonable compensation and other matters. The party, who has suffered an eviction decree is entitled to at least one remedy which the legislature has provided in terms of Section 44 of the Rent Act. This, however, does not mean or imply that the Revisional Authority must routinely grant interim relief without any

satisfaction on the aspect of *prima-facie* case, the balance of convenience, irreparable loss and injury. If some triable issue is raised, then obviously the eviction is required to be stayed subject of course to conditions with regard to deposit of compensation and other like matters. Otherwise, the situation might arise where a party will have to suffer eviction, even before the Revision Application is taken up for consideration on its own merits.

11] In the present case, the decree of eviction has been made on the ground that the petitioner has failed to file an application for leave to defend within 30 days from the receipt of summons as provided under Section 43(4)(a) of the Rent Act. In the Revision Application, the petitioner has raised certain issues in the context of service of summons. This is hardly a stage to decide whether such contentions are right or wrong. However, at least at this stage, it cannot be said that no triable issue whatsoever has been made or that the grounds urged in the Revision Application are totally frivolous. In these circumstances, the order impugned in Revision Application is required to be stayed during pendency of the Revision Application. Such a stay, however, shall be conditional upon deposit of reasonable compensation by the petitioner. This is in accord with

the decision 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

12] The suit premises in the present case is a two bed-room apartments in a building located just opposite Juhu Seashore. The suit premises ad-measure around 660 sq. ft. The contractual compensation in terms of Leave and Licence Agreement entered into between the parties on 3 July 2009 was for Rs.30,000/- per month. The term of licence was to end by 31 March 2011. Clause 20 of the Leave and Licence Agreement dated 3 July 2009 provides that in case, the petitioner fails to vacate the suit premises, then the petitioner shall be liable to pay each of the Licensor an amount of Rs.90,000/- per month. This would come to Rs.2,70,000/- per month.

13] The petitioner through his advocate on 8 February 2013 has set up some case that there was an Agreement for Sale of the suit premises to the petitioner for consideration of Rs.3.25 Crores. Such

1 2005(1) SCC 705

2 2009(5)ALL MR 1001

material, if taken into consideration, then the reasonable compensation in respect of suit premises can be safely determined at Rs.90,000/- per month. This is not a case where the financial capacity of the petitioner is such as to he unable to afford making of such deposit. It is to be noted that the suit premises are at Juhu and in very close proximity to the Seashore. Generally, the premises of this nature would fetch very high compensation. Even according to the Agreement pleaded by the petitioner, the price of the suit premises is in the range of Rs.3.25 Crores.

14] Taking into consideration of all these circumstances, it is only appropriate if the petitioner deposits before the Revisional Authority compensation at the rate of Rs.90,000/- per month effective from 1 June 2015 till the Revision Application is disposed of by the Revisional Authority. The time limit for deposit of arrears or the arrears at the rate of Rs.90,000/- per month with effect from 1 June 2015, is granted upto 10 September 2015. The arrears to include compensation for the month of August 2015 as well. If any deposits have been made in pursuance of the interim orders of this Court, the petitioner shall be entitled to credits for the same. The deposits for further periods should be made on or before fifth day of each

succeeding month. In case, there is any default, then the stay on the eviction decree shall stand vacated.

15] The order dated 15 April 2015 has also directed the petitioner to pay monthly compensation at the rate of Rs.30,000/- per month from 1 December 2011 to 28 February 2014 and compensation at the rate of Rs.60,000/- per month from 1 March 2014 till the petitioner hands over the vacant possession of the suit premises to the respondents. The petitioner seeks stay upon these directions as well. The normal rule which applies in case of stay upon execution of money decrees will apply in such a situation. There is no case made out by the petitioner to call for any deviation from this normal rule. Accordingly, there shall be a stay upon Clauses '2' and '3' of the operative portion of the order dated 15 April 2015, subject to the petitioner's depositing before the Revisional Authority on or before 10 September 2015. The amount of Rs.30,000/- per month for the period between 1 December 2011 and 28 February 2014 and the amount at the rate of Rs.60,000/- per month from 1 March 2014 till 30 May 2015. In case such amount is not deposited before the Revisional Authority on or before 10 September 2015,

the respondents shall be entitled to execute the order for the recovery of the said amount.

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

A] The impugned order dated 30 June 2015 is set aside;

B] There shall be a stay upon the execution of the order dated 15 April 2015 made by the Competent Authority, subject to the following:

(i) The petitioner depositing before the Revisional Authority compensation at the rate of Rs.90,000/- per month with effect from 1 June 2015; and

(ii) The petitioner depositing before the Revisional Authority an amount of Rs.30,000/- per month for the period between 1 December 2011 and 28 February 2014 and amount at the rate of Rs. 60,000/- per month for the period between 1 March 2014 and 30 May 2015, on or before 10 September 2015.

- C] In case, there is any default in deposit of arrears, amounts and compensation, the stay upon the execution of the order dated 15 April 2015 shall stand vacated;
- D] It is made clear that this Court has not gone into the merits of the matter. Accordingly, all contentions of all parties are kept open for decision by the Revisional Authority in Revision Application No. 203 of 2015. The Revision Application shall be decided by the Revisional Authority in accordance with law and on its own merits without being influenced either by any observations contained in the impugned order dated 30 June 2015 or for that matter the present order;
- E] The Revisional Authority is requested to decide Revision Application No. 203 of 2015 expeditiously;
- F] Rule is made absolute in aforesaid terms. There shall, however, be no order as to costs.

(M. S. SONAK, J.)