

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2242 OF 2015
IN
CIVIL APPLICATION NO. 2301 OF 2014
IN
WRIT PETITION NO. 4100 OF 2005

Surinder Mohan Kurana (since deceased)
through his Legal Heir

1A) Aditya Surinder Khurana .. Applicant

vs.

Surjitsingh M. Sethi and anr. .. Respondents

Mr. P.J. Thorat for the Applicant.

Mr. Ashutosh Gole for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 25 AUGUST 2015.

P.C. :-

1] By this Civil Application, the tenant who is petitioner in Writ Petition No. 4100 of 2015 seeks a recall of the order dated 24 June 2015, by which the tenant has been directed to deposit reasonable compensation at the rate of Rs.25,000/- per month effective from 1 January 2015.

2] The ground for seeking recall is mainly that the landlords, in the past, had taken out Civil Application No. 2350 of 2009 in this petition and this Court on 17 March 2010, whilst granting Rule in the main petition, had directed such Civil Application to be heard alongwith the main petition. Further, the hearing in the main petition was ordered to be expedited.

3] Mr. P.J. Thorat, learned counsel for the tenant, submitted that the landlords suppressed the factum of Civil Application No. 2350 of 2009 and the order dated 17 March 2010 made thereon and on the ground of such suppression, the order made by this Court on 24 June 2015 in Civil Application No. 2301 of 2014, is required to be recalled.

4] It is true that the factum of filing and pendency of Civil Application No. 2350 of 2009 was not disclosed by the landlords. So also, the order dated 17 March 2010 was not brought to the notice of this Court. However, it must be noted that even the landlords, who were heard, before the order dated 24 June 2015 was passed, did not make reference to pending application or the order dated 17 March 2010. In fact, the order dated 24 June 2015 was passed in the absence of learned counsel for the landlords.

5] The aforesaid is possibly on account of the circumstance that different sets of advocate were appeared, at the stage of admission for either of the parties. Although, the disclosure was warranted, considering the facts and circumstances, there is no case as such made out for recall of the order dated 24 June 2015. The order dated 17 March 2010 as also several subsequent orders clearly

indicate that the petition was to be taken up for final disposal and was even ordered to be fixed on the board for final disposal. However, the matter has not come up for final hearing despite the lapse of almost five years since the date of its admission and orders of expedition. In these circumstances, if a direction is made to the tenant to deposit compensation at the rate of Rs.25,000/- per month, not either from the date of grant of interim relief or the date of eviction decree, but only from 1 January 2015, then such order is not required to be recalled on the grounds of so called failure to disclosure about the pendency of Civil Application No. 2530 of 2009. The order for deposit of reasonable compensation at the rate of Rs.25,000/- per month is on the basis of the material those available before the Court. That apart, the order dated 24 June 2015 permits the tenant to place the material on record to assist this Court in determining the rate of reasonable compensation. Accordingly, opportunity is available to the tenant to place the material on record with regard to determination of reasonable compensation.

6] In view of the aforesaid reasons, Civil Application No. 2242 of 2015 is dismissed.

(M. S. SONAK, J.)