

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7629 OF 2014

Vijesh Chawla.] ... Petitioner

Versus

Jacob Varghese.] ... Respondent

Mr. Yadunath Karambil a/w Mr. Rohan Janardhan & Mr. Mahendra Jawale i/b Rex Legalis for Petitioner.

Mr. V. Narayanan i/b Anisha Narayanan for Respondent.

CORAM :- M. S. SONAK, J.

DATE :- JULY 15, 2015

P. C. :-

1. This petition is directed against the order dated 07/08/2014 made by the Additional Commissioner, Konkan Division, acting as Appellate Authority under the provisions of Maharashtra Rent Control Act, 199 ('said Act'). The impugned order grants the Petitioner the stay upon the execution of order dated 04/07/2014 made by the competent authority directing the eviction of the Petitioner subject to deposit of an amount of Rs.10,00,000/- (Rupees Ten Lacs Only) towards arrears of license fee.

2. The competent authority, by its order dated 04/07/2014, has not only directed the eviction of the Petitioner but further directed the Petitioner to pay to the Respondent herein compensation at the

rate of Rs.4,000/- (Rupees Four Thousand Only) per month from 10/11/1995 till the vacant possession of the suit premises is delivered to the Applicant. The Appeal Court, has stayed the execution of the eviction decree, as also the execution of the decree to pay the amount of Rs.4,000/- per month from 10/11/1995 upon the condition that the Petitioner deposits before the Appellate authority a sum of Rs.10,00,000/-. There is no serious dispute that the calculation from 10/11/1995 at the rate of Rs.4,000/- per month would broadly correspond to the figure of Rs.10,00,000/- which is directed to be deposited.

3. The learned Counsel for Petitioner, however, submitted that the order dated 04/07/2014 made by the competent authority is itself without jurisdiction. The learned Counsel submitted that from the pleadings of the parties, it is clear that issue of title was very much involved and the competent authority lacks jurisdiction to go into the same. The learned Counsel for Petitioner pointed out that the Petitioner's case was disbelieved because the Petitioner had produced xerox copies of the documents in respect of his defence. However, the learned Counsel pointed out that the record would indicate that even the Respondent herein had placed reliance upon xerox copies, which were accepted by the competent authority at the time of making of order dated 04/07/2014. For all these reasons, the learned Counsel for Petitioner submitted that the direction to deposit a sum of Rs.10,00,000/- is without jurisdiction and in any case, harsh and inequitable.

4. Having heard the learned Counsel for parties and perused the record, there is no reason to interfere with the impugned order. As noted earlier, the impugned order merely grants the conditional stay. The condition imposed, is almost a routine one, in the context of stay to the execution of money decree or for that matter, stay to the execution of an eviction decree. Applying the principles of Order 41 Rule 5, it cannot be said that the direction to deposit Rs.10,00,000/-, which corresponds to compensation at the rate of Rs.4,000/- per month from 10/11/1995, is in any manner, without jurisdiction or for that matter, harsh or inequitable. Besides, the Petitioner has obtained not merely a stay on the execution of the monetary component or the order dated 04/07/2014, further the Petitioner, on the basis of interim relief granted by the impugned order, has also obtained a stay on the execution of the eviction decree. Therefore, apart from the principles of Order 41 Rule 5, the principles analogous to those in the cases of *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd*¹ and *State of Maharashtra and Another Vs. Supermax International Private Limited and Others*² will also apply.

5. The contentions raised by the learned Counsel for Petitioner primarily relate to the merits of the appeal. No doubt, such contentions, as also the contention which the Respondent may raise, shall be duly considered by the Appellate Authority. However, based upon the said contentions, there is no reason to deviate from normal rule of deposit if the execution of the amounts directed to be paid by

1 (2005) 1 Supreme Court Cases 705

2 (2009) 9 Supreme Court Cases 772

the impugned order is to be stayed. No extraordinary circumstances have been pointed out to deviate from this normal rule.

6. There is accordingly no reason to interfere with the impugned order. This petition is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)