

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10269 OF 2014

Smt. Mebal Domnic D'Souza (Since Deceased)]
Through her Legal heir Mr. Nelson Domnic]
D'Souza.] ... Petitioner

Versus

Mrs. Mrunalini Jayant Sagar]
nee Miss Nrunalini Ramesh Thakre and Ors.] ... Respondents

Mr. Deogirikar for Petitioner.
Mr. Manoj Prajapati i/b Mr. Prashant Goyal for Respondent Nos.1 to 3.
Mr. A. R. Metkari, A.G.P., for Respondent Nos.4 and 5.
Mr. Prabhat Dubey for Respondent Nos.6 and 7.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 01, 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. The challenge in this petition is to the order dated 16/04/2014 by which the Additional Commissioner, Konkan Division, has refused to make any order on the application for interim relief

made by the petitioner seeking a direction to the respondent nos.1, 2 and 3 to deposit the compensation amount. In the impugned order, the Additional Commissioner has held that the application for interim relief will be considered at the stage of final hearing, particularly since the issue as to whether the application made by the petitioner before the competent authority was maintainable or not is required to be decided.

4. In my judgment, although the issue as to whether the application made by the petitioner before the competent authority was maintainable or not is required to be decided, the Additional Commissioner ought to have made some order on the application for interim relief, particularly for the purposes of securing the amount of compensation/rent. As a result of the impugned order, the respondent nos.1, 2 and 3 continue in the suit premises without making any payment whatsoever for the use thereof. In fact, the respondent nos.1, 2 and 3 contend that without prejudice, amount of Rs.3,000/- per month was offered by way of rent, but the petitioner has declined to accept the same.

5. There is also some controversy between the legal representatives of Smt. Mebal D'Souza. The petitioner had claimed to be the sole representative and on the said basis, he petitioner was permitted to come on record. Thereafter, other legal representatives of Late Smt. Mebal D'Souza applied for impleadment in the present proceeding. Without prejudice to the rights and contentions of the

parties, directions were issued to the petitioner to implead the other legal representatives as party. The said order has been duly complied with and the other legal representatives also appear in this proceeding through a Counsel. Considering the aforesaid circumstances, it will be appropriate if directions are issued to respondent nos.1, 2 and 3, without prejudice to their rights and contentions, to deposit before the Additional Commissioner, Konkan Division, an amount of Rs.3,000/- per month with effect from 01/01/1997. The arrears to be deposited within a period of three months from today. The Additional Commissioner is requested to invest such amount in a nationalized bank and the said amount shall abide by final orders that may be made by the Additional Commissioner in the proceedings instituted by the petitioner. Further, the petitioner is directed to implead respondent nos.6 and 7 in this petition as respondents in the proceedings instituted by the petitioner before the Additional Commissioner. The necessary amendment to be carried out within a period of four weeks from today. The respondent nos.6 and 7 are accordingly permitted to appear before the Additional Commissioner in the proceedings instituted by the petitioner.

6. The parties to appear before the Additional Commissioner on 08/10/2015 at 11.00 a.m. and produce the authenticated copy of this order.

7. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

8. It is made clear that this Court has not examined the contentions of parties on their merits. Accordingly all contentions of all parties are left open to be decided by the Additional Commissioner in accordance with law and on their own merits.

9. All parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.