

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

WRIT PETITION NO. 8342 OF 2014

M/s.Dimple Audio Video Pvt. Ltd.

... Petitioner

v/s

Dinanath Badrinath Chabra & ors.

... Respondents

Mr.Ram Apte, Senior Advocate i/by Mr.N.R. Bubna for the petitioner.

Mr.A.A. Kumbhakoni, Senior Advocate along with Mr.Shardul Singh i/by Arshad Nehal for respondent Nos.1 to 3.

CORAM: NITIN M. JAMDAR, J.

DATED : 18TH MARCH, 2015

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Learned counsel for the respondents waives service for the respondents. Taken up for disposal by consent.

2. The petitioner is occupying the shop premises admeasuring 1650 sq.ft. at Sterling Centre situated at Moledina Road, Camp, Pune. There has been an earlier round of litigation between the parties, which arose from a consent decree passed in Regular Civil Suit No.3911 of 2000. A writ petition was filed by the petitioner challenging the execution proceedings pursuant to the consent

decree. An appeal was also filed challenging the consent decree. The appeal was allowed and the consent decree was set aside. Thereafter, the respondent filed a second appeal, which is pending. The respondent thereafter filed another suit bearing Suit No.144 of 2013 in Small Causes Court, Pune, which is the present suit. The respondent also filed an application under Order 15A of Code of Civil Procedure seeking direction against the petitioner to pay compensation at the market rate.

3. The respondent prayed that the petitioner should be directed to deposit an amount of Rs.1,70,87,749/- and also that the petitioner should deposit Rs.1,50,000/- per month towards the license fee and compensation. By the impugned order dated 2 August 2014, the learned Small Causes Court Judge, Pune, directed the petitioner to pay an amount of Rs.88,000/- from January 2006 and directed to continue to deposit Rs.88,000/- per month. There were other directions as regard the amount of Rs.44,000/- deposited by the petitioner pursuant to the orders passed by this Court earlier.

4. Mr.Apte, learned senior counsel for the petitioner submitted that under Order 15A, the learned Judge has no power to direct any amount other than rent/license fee. He submitted that the amount of Rs.44,000/- is mentioned in the agreement and, therefore, the direction to pay Rs.88,000/- considering the market condition, was beyond the ambit of Order 15A. Mr.Kumbhakoni,

learned senior counsel for the respondent, on the other hand, relied on the decision of a learned Single Judge in the case of ***Bharat Petroleum Corporation Ltd. v/s Thakorbhai Ranchhodji Desai & ors.***, reported in **2003 (6) BomC.R. 337**. He also submitted that the agreement provides for escalation of 10% per year and since the petitioner is occupying the premises for the last 10 years, the amount of Rs.88,000/- fixed by the learned Judge is correct and considering the conduct of the petitioner no equitable relief be extended to the petitioner in the writ petition.

5. Order 15A reads as under :

“Order 15A : (1) In any suit by a lessor or a licensor against the leasee or a licensee, as the case may be, for his eviction with or without the arrears of rent or license fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears upto the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or license fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.”

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the court shall consider any such cause, if shown in order to decide as to whether the defendant

should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.

(Explanation. - The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule.)

Bare reading of Order 15A shows that, a direction can only regarding deposit the rent or license fee or arrears thereof.

6. The learned Judge, however, has relied upon the decision in the case of ***Atma Ram Properties (P) Ltd. v/s Federal Motors Pvt. Ltd.***, reported in **2005 (3) Bom.C.R. 274**; and ***TCI Telenet Solutions Pvt. Ltd. v/s Milliennium Motors Pvt. Ltd.***, reported in **2013 (2) Bom.C.R. 85**. In these decisions, the Court has considered the parameters of equitable jurisdiction while granting interim orders in the proceedings after the eviction decree and has laid down that the interim orders in favour of tenant, should not be passed without putting the tenant to conditions of deposit of such compensation as may be found just and proper. This principle, however, cannot be invoked when there is a specific provision under Order 15A which deals with the situation prior to the decision of the suit. If such power is assumed by the Small Causes Court, then the Small Causes Court will be free to direct the tenant/licensee to deposit compensation as per the market rate

even before suit is decided on merits. Such power is not contemplated under Order 15A of the Code of Civil Procedure.

7. The decision cited by Mr.Kumbhakoni in ***Bharat Petroleum Corporation Ltd.*** (supra) is of no avail, as the proposition canvassed by him is not laid down therein. In this case, the Court has only reiterated the power of Small Causes Court to direct the deposit of arrears of rent. In fact, the observations made in paragraph 14, which are reproduced below, are against the respondents.

“Para 14: Normally, after holding that the Appeal itself was not maintainable, the order being liable to be set aside it would not have been necessary to consider further argument in the matter. However, reading of the impugned order calls for further observation by this court. The impugned order discloses direction to the petitioners to pay sum of Rs. 10 per sq. ft. per month being damages for wrongful use w.e.f. 1.4.2000 onwards. It is pertinent to note that order has been passed on interim application. The issue as to whether petitioners have occupied the premises from 1.4.2000, whether such occupation is wrongful or not, are the issues to be gone into and decided on merits in the Suit. It was highly improper on the part of the appellate bench of the Small Causes Court to declare the occupation of the suit land by the petitioners as wrongful at the interim stage itself. It is one thing to say that prima facie, in view of continuation of the occupation by the petitioners in the property belonging to the respondents that the petitioners would be liable to pay compensation during the pendency of the suit and another thing to say that such occupation is wrongful w.e.f. 1.4.2000 and that to at the interim stage. Even while exercising powers under Order 39 Rule 10, it

was not permissible for the Court below to declare the occupation of the suit land by the petitioners as of wrongful as the said issue is yet to be decided on merits and it is too premature to pronounce any declaration in that regard. In fact, that could not have agitated in that regard. In fact, that could not have agitated under Order XV-A and on that count also the impugned order cannot be sustained. There is yet another reason for interference in the impugned order. By the impugned order the appellate bench has directed the petitioners to pay sum of Rs. 10 per sq. ft. per month as damages. Neither under Order 39 nor under Order XV-A there is any provision for grant of damages as such during the pendency of the suit. Order 39 Rule 10 speaks of the amount either admitted to be due or belonging to the other side which can be ordered to be paid and provisions of Order XV-A speaks of arrears of rent or licence fees or future mesne profit. Being so, what can be ordered to be paid under both the provisions of law are specifically described there under and those powers do not include power to order payment of damages during the pendency of a suit between the landlord and tenant on the claim that the tenancy is terminated and therefore, the landlord is entitled for eviction of the tenant. On all counts, therefore, the appellate bench of the Small Causes Court has transgressed its jurisdiction and travelled far beyond it while passing the impugned order and therefore, the same cannot be sustained and is liable to be set aside.

8. No other decision is shown whereby Small Causes Court can, on an equitable consideration, direct the deposit of amount more than the rent/license fee pending the suit. The exercise by the learned Small Causes Court Judge is clearly beyond jurisdiction and the impugned order requires to be set aside.

9. As regard the contention of Mr.Kumbhakoni that in any case, the amount of Rs.88,000/- is the fee as per the agreement and, therefore, the invocation of Order 15A is correct, is concerned, it was not the ground in the application nor it was argued before the learned Small Cause Court. The respondent had sought the amount of Rs.1,50,000/- on the ground that, considering the market conditions, the amount of Rs.1,50,000/- would be a just compensation. The learned Judge found that Rs.88000/- will be a just compensation as per the market conditions. Fixing of the compensation at Rs.88,000/- being the rent/fee as per the agreement, was not employed as the criteria. Furthermore, Mr.Apte disputes that, as per the agreement the fee/rent would be Rs.88000/-.

10. Impugned order dated 2 August 2014 passed by learned Small Causes Court Judge, Pune, is quashed and set aside. However, even though I have set aside the impugned order, it will be open to the respondent to file an application to claim an amount of such rent/license fee which, according to the petitioner, is payable considering the escalation clause in the agreement. If such an application is filed, it will be open to the petitioner to contest the same on merits, including the interpretation of the agreement.

11. Mr.Apte submitted that the petitioner has paid an amount of arrears at the rate of Rs.44,000/- per month till February 2015 in the Trial Court. The statement is accepted. However, if this

amount is not paid, it shall be paid within a period of three weeks from today. As regard the withdrawal of this amount, it will be open to the respondent to file appropriate application which will be considered on its own merits. All contentions in that regard are kept open.

12. Considering the fact that the litigation is pending for some time, if the application is made by the applicant within three weeks from today, the same will be decided by the learned Small Causes Court Judge within a period of six weeks thereafter.

13. Rule is made absolute in above terms. No costs.

(NITIN M. JAMDAR, J.)