

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9375 OF 2014

Sumitra S. Khokhani & Ors.	..	Petitioners
VS.		
Jyotindra I. Khokhani	..	Respondent

Mr. R. A. Thorat – Senior Advocate i/b. Ms. Y. Tavaría for
Petitioners.

Mr. P. S. Dani - Senior Advocate i/b. Mr. H. Kode and Mr. S. M.
Suryawanshi for Respondent.

CORAM : M. S. SONAK, J.
DATE : 05 AUGUST 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned
counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 16 September 2014
made by the Appellate Bench of the Small Causes Court to the
extent, it determines reasonable compensation at the rate of
Rs.40,000/- per month as a condition for interim relief of restraint
upon execution of eviction decree dated 31 August 2013.

3] Mr. Thorat, the learned Senior Advocate for the petitioners
submits that the hearing was granted by a particular Bench,
however, thereafter one of the members of the Bench was

transferred and the impugned order has been made and pronounced by a different Bench.

4] Mr. Dani, the learned Senior Advocate appearing for the respondent, on instructions, disputes this position. Mr. Dani further submits that a record of the Court is sacrosanct and in case if any parties seeks variation, then in that case, such party has to take out proceedings before the same Court. In this regard, he relies upon the decision of the Apex Court in the case of *R. S. Nayak vs. A. R. Antulay & Ors.*¹

5] Mr. Dani is right in his submission that in case any controversy arises with regard to the record of the Court then it is for the parties to approach the same Court. In the present case, however, the record is not very clear either way. That apart, the Bench which has pronounced the impugned order dated 16 September 2014 is also reconstituted and the same is not presently and readily available.

6] In the aforesaid view of the matter, it would be appropriate, if the compensation at the rate of Rs.40,000/- is regarded as an ad interim measure and the present Bench is directed to re-hear the matter on the issue of determination of compensation. The Bench

1 (1988) 2 SCC 602

should endeavour to dispose of the application seeking such determination as expeditiously as possible and in any case within a period of two months from the date of production of authenticated copy of this order. Till then, the petitioners to continue to deposit compensation at the rate of Rs.40,000/- per month.

7] It is made clear that this order has been made in the aforesaid peculiar facts and circumstances of the present case. Further, this Court has not examined the merits and accordingly, it will be for the Bench of the Appellate Court to decide the issue of determination in accordance with the material placed on record by both the parties and the law on the subject.

8] It is made clear that the impugned order dated 16 September 2014 to the extent of determination of compensation be treated as an ad interim order. The Bench, which will now hear the matter is at liberty to confirm or vary the same as aforesaid. This order, shall not preclude the Bench, considering the position of its docket, from hearing the main appeal itself on its own merits.

9] Parties to appear before the Appellate Bench on 24 August 2015 at 11 a.m. and produce authenticated copy of this Order.

10] Rule is disposed of in the aforesaid terms.

11] All concerned to act on basis of authenticated copy of this Order.

(M. S. SONAK, J.)

Chandka