

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

WRIT PETITION NO.10003 OF 2015

Shri. Dnyandev Tukaram Kshirsagar

.. Petitioner

Versus

M/s. Pyramid Corporation and another

.. Respondents

Mr. C. P. Yadav, for the Petitioner.

Mr. Shailendra Singh i/by J. P. Consulta, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 16th NOVEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 05.09.2015 passed by the Learned Judge of the Small Causes Court, Mumbai, by which order the application Exh.28 filed by the Respondent No.1 herein i.e. decree holder for directing the Petitioner who is an obstructionist for depositing in the Court an amount for use of the premises pending consideration of his application obstructing the decree came to be allowed and the Petitioner herein was directed to deposit an amount of Rs.10,000/- per month as mesne profit/compensation from the date of decree passed in RAE & R Suit No.1377/2050 of 2006 till date and future compensation/mesne profits at the same rate on or before 10th of each english calender month till the decree is satisfied. The Trial Court has whilst fixing the said amount of Rs.10,000/- has relied upon the valuation

report submitted by the Respondent No.1 herein of the Chartered Engineer V. K. Lad in which valuation report the market value of the property shown is Rs.23,33,931/- and the expected rental compensation per month is mentioned as Rs.17,504/-. The Trial Court has also placed reliance on the judgment of the Apex Court reported in 1999 Bom. R. C. 357 in the matter of Marshall Sons & Co. (I) Ltd. Vs. Sahi Oretrans (P) Ltd., wherein the Apex Court has held that if the execution of a decree is resisted by the obstructionist, then obstructionist is liable to pay mesne profits equivalent to the market rate.

2. The impugned order dated 05.09.2015 is sought to be challenged on behalf of the Petitioner by contending that the area wherein the suit premises are located has been declared as a slum and therefore whether a decree for eviction could be passed is in question. In support of the said contention, some documents are sought to be relied upon by the Learned Counsel for the Petitioner.

3. Per contra, it is the submission of the Learned Counsel appearing for the Respondent No.1 that though the said area was declared as a slum, the said declaration was set aside by the Slum Tribunal by judgment and order dated 13.12.1995 and the matter came to be remanded back to the Competent Authority for a fresh inquiry. It is not necessary for this Court to enter into the said arena in view of the fact that

the obstructionist proceedings adopted by the Petitioner are pending before the Small Causes Court, Mumbai. The arrangement made by the impugned order is pending consideration of the said obstructionist proceedings. It is an undisputed position that the Petitioner is in occupation of the tenanted premises and in terms of the judgment of the Apex Court in *Marshall (supra)*, the obstructionist is liable to pay for such occupation. Prima-facie in absence of any contra material by way of notification produced by the Petitioner to show that the declaration of slum still continues, the submission of the Learned Counsel for the Respondent No.1 at this stage is required to be accepted. The Learned Counsel appearing on behalf of the Petitioner also sought to question the quantum fixed by the Trial Court by the impugned order. It is required to be noted that the premises are totally admeasuring 600 sq.ft. and that too in a busy commercial area as Dharavi in Mumbai. The Learned Counsel appearing for the Respondent No.1 also sought to draw this Court's attention to an order passed by a Learned Single Judge of this Court fixing the compensation at Rs.8000/- for a smaller premises of 150 sq.ft. in the same area (Writ Petition No.8677 of 2015 by order dated 20th October 2015). In my view, therefore, no interference is called for with the impugned order. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]