

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10270 OF 2015

Smt. Shabira Khatoon W/o. Haroon A. Haqim]
(Since Deceased)]
1. Abdul Mobin Haroon Rashid Khan and Ors.] ... Petitioner

Versus

Smt. Kaiful Abdul Rauf.] ... Respondent

Mr. S. P. Srivastava for Petitioner.

Mr. Akhilesh Dubey a/w A. A. Khan i/b Law Counsellors for Respondent.

CORAM :- M. S. SONAK, J.

DATE :- OCTOBER 19, 2015

P. C. :-

1. Heard the learned Counsel for parties.

2. The challenge in this petition is to the order dated 08/10/2015 by which the Executing Court has directed the Bailiff to remove the articles belonging to the petitioner (tenant) in the suit premises, bring the same to the Court and to place the same in safe custody of the Registrar of the Court until further orders.

3. Mr. Srivastava, learned Counsel for petitioner, submits that the execution, in terms of which the petitioner was evicted from the

suit premises was consequent to the dismissal of petitioner's appeal on 18/10/2014. The petitioner had no knowledge about disposal of the appeal and upon the petitioner facing execution proceedings, the petitioner has already applied for recall of order dated 18/10/2014 and the restoration of the appeal. Pending the hearing of such application, the impugned order ought not to have been made. Instead, Mr. Srivastava submitted that proper course would be to expedite the hearing of the application seeking restoration of the appeal and in the meanwhile, the immovable items ought to remain in the suit premises, even though, the petitioner has already suffered eviction therefrom and presently continues to occupy premises in the same building on the first floor.

4. In my judgment, there is no case made out by the petitioner for claiming any relief in this petition. The petitioner suffered an eviction decree on 10/07/2009. The Appeal Court stayed the execution of such decree by order dated 17/11/2011 subject to the condition that the petitioner deposits reasonable compensation of Rs.5,000/- per month. The petitioner challenged such determination and this Court, by order dated 03/04/2012, reduced the amount of reasonable compensation to Rs.4,200/- per month. The petitioner deposited the amount of reasonable compensation up to May 2012 and thereafter did not bother to make any further deposit. Thus, it is clear that at least from June 2012, there is no interim relief in operation and the petitioner had rendered herself vulnerable to the execution of the eviction decree.

5. Ultimately on 18/10/2012, the appeal itself has been dismissed. The petitioner has applied for restoration on 27/07/2015. In the meanwhile on 29/06/2015, the petitioner has already been evicted from the suit premises. The Trial Court has observed that the suit premises have been let out to a new tenant Mr. Obaid Ahmed Uzair Ahmed. In such circumstances, including in particular failure on the part of the petitioner to deposit reasonable compensation at the rate of Rs.4,200/- per month from May 2012, no useful purpose would be served by permitting the petitioner to retain movable articles in the suit premises, even though the petitioner has already been suffered eviction therefrom. Even the conduct of the petitioner does not entitle the petitioner for any indulgence as applied for.

6. There is no necessity for the Executing Court to be burdened with the safety of the movable articles of the petitioner. The petitioner cannot expect that the movable articles of the petitioner are stored in Court premises because this would mean occupation of valuable space in the Court premises and further, the responsibility for safety. In exercise of jurisdiction under Article 227 of Constitution of India, even that part of the impugned order which states that articles are to be kept in the Court premises for safe custody of the Registrar of the Court, is set aside. The petitioner is, however, given liberty to take away the articles, to which detailed reference is made in the inventory at page 21 (of this paper-book) within a period of 15 days from today. In case the items are not removed within 15 days from today, the respondent-landlord to apply to the Executing Court to

dispose of the movable articles in accordance with law and thereafter deposit the amounts recovered before the Executing Court. The Executing Court to award some reasonable compensation to the landlord for continuance of the movable items in the suit premises.

7. The Appeal Court to decide the application for restoration made by the petitioner on 27/07/2015, as expeditiously as possible and in any case, within a period of six months from today. The Appeal Court shall ensure that the petitioner deposits before the Appeal Court reasonable compensation as determined by this Court as the rate of Rs.4,200/- per month from June 2012 till the date the petitioner was evicted from the suit premises i.e. 29/06/2015.

8. The petition is disposed of in the aforesaid terms.

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

10. Mr. Srivastava, learned Counsel for petitioner, requests for a stay on the operation of the order just made for a period of four weeks. In my judgment, no case is made out for grant of a stay. The petitioner has already been evicted. The petitioner will really gain nothing by retaining the movable items in the suit premises. Besides, the petitioner, on the basis of stay order granted by the Appeal Court, has continued in possession up to 29/06/2015 but stopped depositing reasonable compensation at the rate of Rs.4,200/- from May 2012.

Besides, the petitioner has admitted that the petitioner and her family members are staying in alternate premises in the same building on the first floor. Accordingly, the application for stay is declined.

(M. S. SONAK, J.)