

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10838 OF 2015

|                                  |    |            |
|----------------------------------|----|------------|
| The New India Assurance Co. Ltd. | .. | Petitioner |
| VS.                              |    |            |
| Satyavati Ramprasad Uria         | .. | Respondent |

Mr. V. Y. Sanglikar for Petitioner.  
Mr. Ashish Mehta with Mr. Deepak Jamsandekar, Jaya Misal i/b. Mr. Deepak Jamsandekar for Respondent.

**CORAM : M. S. SONAK, J.**  
**DATE: 29 OCTOBER 2015**

**P.C. :-**

- 1] **Not on board. Upon production, taken on board.**
- 2] The challenge in this petition is to the orders dated 24 August 2015 and 12 June 2007. By the order dated 24 August 2015, the Appellate Bench of the Small Causes Court (Appeal Court) has in fact granted the Petitioner a stay upon execution of judgment and order dated 13 January 2015 on Mesne Profit Misc. Application No. 15 of 2008 in TE & R Suit No. 193/206 of 2003. The order dated 12 June 2007 has been made by the Small Causes Court at Mumbai purporting to exercise the power of review and modifying the decree.
- 3] Mr. Sanglikar, the learned counsel for the Petitioner has

contended that the Petitioner has already deposited an amount of Rs.9,65,00,000/- as the Respondent insisted upon payment of contractual rent, when the Petitioner had applied for determination of standard rent. Ultimately, the proceedings for determination of standard rent have been disposed of and it is held that the rents payable by the Petitioner are substantially lower than the contractual rents. The learned counsel for the Respondent points out that a Review Petition is already pending with regard to the issue of determination of standard rent. Mr. Sanglikar further points out that mesne profits have been determined even for the period beyond which the Petitioner had offered to hand over the possession of the suit premises to the Respondent, but the Respondent had refused to take possession. Mr. Sanglikar has further submitted that the order dated 12 June 2007 is a nullity and therefore, the Petitioner is entitled to challenge the same even at this stage.

4] By order dated 24 August 2015, the Appeal Court has granted a stay to the execution of the decree impugned before it, subject to the Petitioner depositing in the Appeal Court the entire decretal amount. Further, directions have been issued for investment in a nationalised bank. This is a routine order made under the provisions of Order XLI Rule 5 of the CPC particularly when it

comes to execution of money decree. The issue as to whether the Petitioner is entitled to adjustment of the amount deposited in the context of proceedings for determination of standard rent is not required to be gone into at this stage. Admittedly, the said proceedings are separate and further even a Review Petition filed by the Respondent is pending.

5] In case the Petitioners are of the opinion that the deposit of Rs.9,65,00,000/- in the said proceedings is in excess of what was due, then it is always open to the Petitioner to apply for withdrawal of the said amount. Such application if made will be considered by the Appropriate Court in accordance with law and on its own merits. However, there is no question of linking the two amounts.

6] If the Petitioner desires to obtain interim relief in the context of execution of decree dated 13 January 2015, it is only proper that the Petitioner is directed to deposit the decretal amount. Further, the issue as to whether the decree has been rightly made or not is a matter which is writ large before the Appeal Court. The submission that no mesne profits should have been awarded after the date when the Petitioner allegedly offered to hand over the possession, is one which will be considered at the stage of deciding the appeal on merits. Mr. Sanglikar has submitted that by means of

the impugned decree dated 13 January 2015 exorbitant mesne profits have been awarded to the Respondent. This is a matter which is bound to be considered by the Appeal Court whilst deciding the Appeal on merits. However, at this stage, there is no case made out to interfere with the impugned orders.

7] In the context of order dated 12 June 2007 at the outset, the challenge is barred by delay and laches. That apart, the challenge is virtually to the modified decree itself. If it is the case of the Petitioner that the order dated 12 June 2007 is a nullity, then it may perhaps be open to the Petitioner to raise the issue of nullity in the course of execution proceedings. However, there is no question of entertaining the petition as against the order dated 12 June 2007 after a period of almost eight years since such order was made. It is made clear that this Court has not adjudicated upon the contention of nullity or otherwise.

8] For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

9] It is made clear that this Court has not gone into the merits of the matter and therefore none of the observations in this order may be construed as observations on the merits of the matter. All

contentions of all parties are left open to be decided by the Appeal Court.

10] At this stage, Mr. Sanglikar states that the time for deposit of the entire decretal amount has since expired and therefore he requests for extension of time to deposit the decretal amount. Request is reasonable and therefore time limit for deposit of decretal amount is extended by a period of two months from today.

11] Once the decretal amount is deposited by the Petitioner, the Appeal Court to consider deciding the Appeal as expeditiously as possible.

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

**(M. S. SONAK, J.)**