Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11944 OF 2013.

Shri Prakash M.Hathiramani .. Petitioner
Vs.
Shri Taufiq Haroon Lakhani and anr. .. Respondents

Mr.P.J.Thorat, for Petitioner.
Ms Suhasini Mutalik, for Respondent Nos.1 & 2.

CORAM: N.M.Jamdar, J.
Monday 30 March, 2015

Oral Order :

By this petition, the Petitioner challenges the order dated 4 December 2013 passed by the learned District Judge Pune, below Exhibit 14 and Exhibit 18, in Civil Appeal No.253 of 2013 filed by the Petitioner.

2 The Respondents filed Regular Civil Suit No.522 of 2008 seeking eviction of the Petitioner on the ground of bonafide requirement and permanent construction carried out by the Petitioner. The suit was decreed by the Small Causes Court, Pune, on 24 July 2012. Thereafter the Petitioner filed an appeal in the District Court, Pune. In this appeal, the Petitioner filed an application below Exhibit 14 for stay of the Judgment and Decree passed by the Small Causes Court. Respondents filed an

application below Exhibit 18 fixing interim compensation during the pendency of the appeal. The learned District Judge by the impugned order has fixed interim compensation at the rate of Rs.55,000/- per month to be paid from 24 July 2012 till the date of the passing of the order on 4 December 2013 and thereafter.

3 The premises is a shop admeasuring 650 sq.ft. with mezzanine floor, situated on M.G.Road, Camp Pune. The shop premises are on the ground floor. The Respondents placed on record a Ready Reckoner of four years, the last year being 2012-2013. The Respondents also placed on record an agreement in respect of the adjoining shop on the ground floor and also of a premises admeasuring 4326 sq.ft. in the same locality. The Respondents also placed on record a valuation report. The petitioner on the other hand placed no material on record before the learned District Judge.

4 The learned counsel for the Petitioner relied upon the case in **Atmaram Properties (P) Ltd., Vs Federal Motors (P) Ltd.** reported in *(2005) 1 SCC 705*; **Pradeep Kumar V/s. Hajari Lal** reported in *(2008) 3 SCC 299*; **State of Maharashtra V/s Super Max International Pvt. Ltd**. reported in *(2009) 9 SCC 772* and in the case of **Sunita Rani V/s. Sri Chan**d reported in (2009) 10 SCC 628. He submitted that the learned District Judge was in error in directing the Petitioner to pay the compensation at the market rate as the above decisions would show that the criteria is reasonable compensation. He submitted that generally 1/10th of market rate

should be taken as reasonable compensation. According to him the agreements relied upon by the Respondents have been applied to arrive at the compensation, without finding out whether they are comparable. He submitted that the condition of the premises has also not been taken into account. The learned counsel for the Petitioner submitted that even assuming Rs.55,000/- was market rate at the most Rs.5,000/- would be reasonable amount and since this Court by ad-interim order directed the Petitioner to pay Rs.15,000/- p.m. which is being paid regularly, the same amount should be continued. He submitted that appeal is now listed for hearing.

5 The decisions which are relied upon by the learned counsel for the Petitioner give various indicators in respect of exercise to be undertaken for fixing reasonable compensation. By passing an order directing the tenant to pay reasonable compensation during the pendency of the appeal, the Court uses it's equitable jurisdiction. The Court fixes the compensation, keeping in mind the fact that the appeal before it is pending and that the landlord is deprived of use of his premises by the order of stay to the decree of eviction.

6 The underlying guidance for use of this discretion is enunciated by the Apex Court in the case of **Atmaram** (supra) as under :-

> *"9. Dispossession, during the pendency of an appeal of a party in possession, is generally considered to be 'substantial*

loss' to the party applying for stay of execution within the meaning of Clause (a) of Sub-rule (3) of Rule 5 of Order 41 of the Code. Clause (c) of the same provision mandates security for the due performance of the decree or order as may ultimately be passed being furnished by the applicant for stay as a condition precedent to the grant of order of stay. However, this is not the only condition which the appellate Court can impose. The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate Court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not the statutory right conferred on the appellant. So also, an appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of stay must do equity for seeking equity: Depending on the facts and circumstances of a given case an appellate Court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. In ***South Eastern Coalfields Ltd.*** *v.* ***State of M.P. and Ors.,*** *this Court while dealing with interim orders granted in favour of any party to litigation for the purpose of extending protection to it, effective during the pendency of the proceedings, has held that such interim orders, passed at an interim stage, stand reversed in the event of the final decision going against the party successful in securing interim orders in its favour; and the successful party at the end would be justified in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery to it of benefit earned by the opposite party under the interim order of the High Court, or (b) compensation for what it has lost, and to grant such relief is the inherent jurisdiction of the Court. In our opinion, while granting an order of stay under Order 41 Rule 5 of the CPC, the appellate court does have jurisdiction to put the party seeking stay order on such terms as would*

> *reasonably compensate the party successful at the end of the appeal in so far as those proceedings are concerned. Thus, for example, though a decree for payment of money is not ordinarily stayed by the appellate Court, yet, if it exercises its jurisdiction to grant stay in an exceptional case it may direct the appellant to make payment of the decretal amount with interest as a condition precedent to the grant of stay, though the decree under appeal does not make provision for payment of interest by the judgment-debtor to the decree-holder. Robust commonsense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record - all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in* ***Olga Tellis and Ors.*** *v.* ***Bombay Municipal Corporation and Ors.*** *- "Commonsense which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants".*

This approach which is to be kept in mind by the Appellate Court is perforce applicable when writ jurisdiction against the use of this discretion is invoked. Writ jurisdiction against such equitable orders is not to be exercised unless the order is perverse and opposed to common sense. While fixing reasonable the compensation there is generally some margin of error, and writ jurisdiction is not to be exercised as an appellate jurisdiction minutely scrutinising every error.

7 In the present case, the Petitioner has not placed any material on record to show what was generally prevalent rate in the area on the basis of which reasonable compensation could be arrived at.

The Petitioner has chosen only to criticise the material produced on record by the Respondents. The Respondents have placed on record the details of the shop admeasuring 650 sq.ft. situated at 304/305 on M.G.Road. The compensation paid therein is Rs.4,95,000/-. The premises in question are situate at House no.311 and in addition to area of 650 sq.ft. have a mezzanine floor as well. The Respondents have also placed on record TDS certificate issued by the parties to the agreement in respect of shop No.304. One more instance is placed on record. It is the agreement entered into by one Shahrukh Eirani and M/s.SSIPL Retail Ltd. Co. in respect of area of 4326 sq.ft. wherein the rent for the year 2013-2014 was Rs.5,02,550/-. The Ready Reckoner which was filed on record shows that the market value of the suit premises in the year 2013 was Rs.2,46,10,282/-. Once this material was placed before the learned Judge, fixing of compensation of Rs.55,000/- can not be termed as perverse. The learned counsel for the Respondents has submitted that in fact the amount of Rs.55,000/- itself is on the lower side. In absence of any contra material filed by the Petitioner, on the basis of the material placed on record, it cannot be said that the view taken by the learned District Judge, was not a possible view. Therefore, there is no merit in this petition.

8 However, it also needs to be noticed that on 21 December 2013, learned Single Judge (Coram : R.G.Ketkar J.) while issuing notice in this petition considered the fact that the Respondents had

offered to pay Rs.25,000/- p.m. Upon this condition ad-interim relief was granted in favour of the Petitioner which is continued till date. The learned counsel for the Petitioner submitted that as per order of the Court, the amount is paid and if today the Petitioner is directed to pay the arrears immediately, before the appeals are decided as a condition precedent for hearing of the appeal, it will not be possible for him to do so. The learned counsel for the Respondents submits that if necessary the Respondents would agree to adjourn the appeal to enable the Petitioner to pay the arrears. In view of these facts and circumstances and the ad-interim order dated 21 December 2013, I am of the opinion that the Petitioner requires to be given some time to clear the arrears now payable in view of the rejection of the petition. Eight weeks time for payment of these arrears in my opinion would be fair and equitable.

9 The Writ Petition is disposed of as under -

(i) The order dated 4 December 2013 passed by the learned District Judge Pune, is confirmed.

(ii) The Petitioner shall deposit the arrears payable as per the impugned order after deducting the amount of Rs.15,000/-. This amount shall be deposited in the District Court, Pune within a period of eight weeks from today.

(iii) It will be open to the learned District Judge to take up the hearing of the Civil Appeal No.253 of 2013 before the expiry of eight weeks period granted to the Petitioner as above.

(iv) No costs.

(N.M.Jamdar, J.)