

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3470 OF 2014.

(BRIJ MOHAN RAMESHWAR PRASAD & ANR..VS..THEATRE GITANJALI & 2 OTH..)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : MARCH 30, 2015.

Heard Mr.S.P.Kshirsagar, learned advocate for the petitioners, Mr.V.V.Bhangde, learned advocate for the respondent Nos. 1 and 2. None appears for respondent No.3.

2. The petition is filed by the original defendant Nos. 1 and 2 challenging the order passed by the District Court imposing conditions while granting stay to the execution of the judgment and decree passed by the trial Court.

3. Respondent Nos. 1 and 2 / plaintiffs filed civil suit against the petitioners and respondent No.3 contending that the respondent No.3 was lessee in the suit premises and as per the lease deed dated 1st November, 1995 the agreed rent was Rs.9,000/- per month. According to the respondent Nos. 1 and 2, damages of Rs.67,500/- for the period from 1st March, 1998 to 15th September, 1998 were claimed. According to the respondent Nos. 1 and 2, the respondent No.3 stopped his business and handed over the possession of the suit shop to the petitioners. The respondent Nos. 1 and 2 contended that the petitioners occupied the suit shop illegally and therefore, filed the suit for possession. The trial Court has decreed the suit by the judgment dated 28th February, 2013. The petitioners, being aggrieved by the judgment and

decree passed by the trial Court, have filed appeal before the District Court. In this appeal, the petitioners filed an application (Exh. 4) on which the impugned order is passed. The learned District Judge has granted stay to the execution of the judgment and decree passed by the trial Court on the condition that the petitioners should deposit the amount calculated at Rs.5,000/- per month from 16th September, 1998 till 11th April, 2014 i.e. the date of order and further directed the petitioners to deposit Rs.5,000/- per month till disposal of the appeal. The petitioners, being aggrieved by the aforesaid conditions imposed by the learned District Judge, have filed this petition.

4. The learned advocate for the petitioners has submitted that the judgment and decree passed by the trial Court is unsustainable in law inasmuch as the dispute falls within the jurisdiction of the Small Causes Court and the Civil Court trying regular civil suits has no jurisdiction to entertain and decide the claim of the respondent Nos. 1 and 2. It is further submitted that the learned District Judge has committed an error of jurisdiction by directing the petitioners to deposit the occupation charges from 16th September, 1998 till 28th February, 2013 i.e. the date of judgment and decree passed by the trial Court. In support of his submission the learned advocate has relied on the judgment given in the case of *Atma Ram Properties (P) Ltd. ..vs.. Federal Motors (P) Ltd.*, reported in **(2005) 1 SCC 705**.

5. Mr. Bhangde, learned advocate for the respondent Nos. 1 and 2 has submitted that the respondent No.3 who was the lessee in the suit shop was paying Rs.9,000/- per month and accordingly the respondent Nos. 1 and 2 had

claimed damages at the rate which have been granted by the trial Court. It is submitted that the learned District Judge, in fact, should have imposed the condition of paying Rs.9,000/- per month as occupation charges while granting stay to the execution of the decree passed by the trial Court. The learned advocate has submitted that the impugned order has been passed by the learned District Judge rightly exercising his jurisdiction and discretion according to law and it does not suffer from any infirmity and illegality which necessitates interference by this Court in the extraordinary writ jurisdiction.

6. As far as the submissions made on behalf of the petitioners that the judgment and decree passed by the trial Court is unsustainable in law as the suit should have been decided by the Court of Small Causes, cannot be considered, as the appeal filed by the petitioners before the District Court is pending and this issue will have to be decided by the District Court. The only point which is required to be considered in this writ petition is, whether the learned District Judge has committed an error of jurisdiction while directing the petitioners to deposit Rs.5,000/- per month as occupation charges for the period prior to the date of the judgment and decree passed by the trial Court.

7. In my view, in the facts of the present case, the conditions imposed by the learned District Judge cannot be said to be improper or unjustified. In the case of *Atma Ram Properties* (supra) the *lis* was between the landlord and the tenant and the conclusion of the Hon'ble Supreme Court in paragraph 16 of the judgment, on which the learned advocate for the petitioners has relied, are in those facts.

In the present case, according to the respondent Nos. 1 and 2, there is no privity of the contract between the petitioners and the respondent Nos. 1 and 2. The respondent No.3 has not challenged the judgment and decree passed by the trial Court. It would not be proper on my part to delve into the other issues regarding the relationship of the parties and it would adversely affect the adjudication of the appeal pending before the District Court. However, I am satisfied that the impugned order passed by the learned District Judge does not suffer from any illegality or perversity.

The writ petition is **dismissed** with costs quantified at Rs.Two Thousand.

The petitioners shall pay the costs to the respondent Nos. 1 and 2 and produce the receipt on the record of the appeal before the District Court within one month, failing which the learned District Judge shall pass appropriate orders considering it to be non-compliance of the order passed by this Court.

8. At this stage, Mr. Kshirsagar, the learned advocate for the petitioners prays for time to deposit the amount of arrears of the occupation charges. The learned advocate for the respective parties submit that the amount comes to about Rs.10,20,000/- till April, 2015.

9. The petitioners are permitted to deposit Rs.2,00,000/- per month till the amount of arrears of the occupation charges is deposited. The amount of installment shall be deposited before fifth day of every month, the first installment starting from April, 2015.

If the petitioners commit default in depositing the installment, the interim order, granted by the District Court, shall stand vacated without reference to the Court.

JUDGE

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