

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1225 OF 2016

Charanjeet s/o Saidas Vikhona
Age: 61 years, Occ: Business,
R/o: Vikhona Boutique, New Osmanpura,
Aurangabad. ... Petitioner

Versus

Surendrasingh s/o Sardarsingh Chhabda
Age : 66 years, Occu. Business,
R/o : Sindhi Colony, Aurangabad.
Through its G.P.A.
Harmeetsingh Surendrasingh Chhabda
Occ. : Business, R/o : As above. ... Respondent

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Advocate for Petitioner : Mr. Ajeet B. Kale
Advocate for Respondent : Mr. R. L. Chhabda
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CORAM : V. K. JADHAV, J.
DATED : 23rd FEBRUARY, 2016

ORAL JUDGMENT:

1. Rule. Rule returnable forthwith. By consent of the parties, heard finally at admission stage.
2. The respondent-original plaintiff instituted a suit bearing Rent Suit No. 38 of 2010 before learned 13th Jt. Civil Judge, Junior Division, Aurangabad for eviction of petitioner-original defendant from the property bearing Municipal House No. 5-5-76 situated at New Osmanpura, Aurangabad, where the petitioner is tenant. Learned

C.J.J.D., by judgment and decree dated 4.11.2015, decreed the suit and accordingly directed the petitioner-defendant to vacate the possession of the suit premises within two months. Being aggrieved by said judgment and decree dated 4.11.2015, petitioner-defendant preferred an appeal before District Judge, Aurangabad bearing Rent Appeal No. 9 of 2015. Learned District Judge, by order dated 02.01.2016 passed below Exh.5 in the said appeal, allowed the stay petition - Exh.5 filed by petitioner-defendant on condition of depositing Rs.15,000/- per month in the court from the date of decree alongwith contractual rent of Rs.2000/- p.m. So far as condition of deposit of Rs.15,000/- p.m. in the court apart from contractual rent of Rs.2000/- p.m., the petitioner-original defendant has filed this writ petition.

3. Learned counsel for the petitioner submits that the petitioner-defendant runs a small shop of ladies boutique/dress material and total area of shop is 312 sq. ft. Learned counsel submits that the condition of directing the petitioner-defendant to deposit amount of Rs.15,000/- p.m. is quite excessive. Learned counsel submits that the lower appellate court has observed in the impugned order that the adjoining premises is fetching monthly rent of Rs.1,96,308/- and considering the area occupied by the petitioner-defendant, the amount of Rs.15,000/- would be proper. Learned counsel submits that so far as the said agreement is concerned, the agreement of lease came to be executed in favour of State Bank of Hyderabad and as per the boundaries shown in the lease

agreement, the said property is abutting to the 15 meter wide Government road. Learned counsel submits that so far as the suit property is concerned, the same is two storied building consisting of 7 shops in ground floor and one hall at the first floor bearing Municipal house No. 5-5-76 situated in New Osmanpura, Aurangabad. Learned counsel submits that the lower appellate court has erroneously compared the rent of the suit property with the rent of property given to State Bank of Hyderabad.

4. Learned counsel for the respondent submits that the lower appellate court after considering the surrounding property has rightly directed the petitioner-defendant to pay Rs.15,000/- p.m. apart from the contractual rent of Rs.2000/- p.m. until disposal of appeal. Learned counsel for the respondent submits that the hearing of appeal may be directed to be expedited. Learned counsel submits that the impugned order calls for no interference and the writ petition is devoid of merits and is liable to be dismissed.

5. It appears that the petitioner-defendant is carrying out a business of Ladies boutique/dress material in the shop admeasuring 312 sq. ft. carpet area. The said shop is situated in New Osmanpura, Aurangabad. The location of the shop and surrounding properties has taken into consideration for comparison. In my opinion, the condition of directing the petitioner-defendant to pay Rs.15,000/- p.m. from the date of decree

is some what excessive. This writ petition can be disposed of by modifying the order passed by the lower appellate court. The petitioner-defendant may be directed to pay Rs.10,000/- p.m. instead of Rs.15,000/- p.m. until disposal of appeal to the respondent-plaintiff. Hence, the following order is passed:-

O R D E R

- I. Writ petition is hereby partly allowed.
- II. The order dated 2.1.2016 passed by the District Judge-6, Aurangabad in Rent Appeal No. 9 of 2015 is modified to the extent that the petitioner-defendant instead of Rs.15,000/- p.m shall pay Rs.10,000/- p.m. from the date of decree until disposal of the appeal. The rest of the order passed by the learned District Judge-6, Aurangabad dated 2.1.2016 stands confirmed.
- III. The lower appellate court is hereby directed to expedite the hearing of appeal and dispose of the same within six months from today.
- IV. Writ petition is disposed of. Rule is made absolute in the above terms. No costs.

(V. K. JADHAV, J.)

rlj/

