

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5313 OF 2014

Salim Akbar Shaikh & Ors. ... Petitioners
Vs
Smt. Bhagyalaxmi S. Nallulwar & Ors. ... Respondents
...

Mr. Satyajeet A. Rajeshirke for the Petitioners.

CORAM : K. K. TATED, J.
DATE : 7 APRIL, 2016

P.C. :

1 Heard the learned counsel Mr. Satyajeet A. Rajeshirke for petitioners. Though the respondents are duly served, none appeared on behalf of them when the matter called out.

2 By this petition under Article 227 of the Constitution of India, petitioner – orig-defendant-tenant challenges part of the order dated 17th December 2013 passed by the learned District Judge-3, Solapur below Exh. 7 in Civil Appeal No. 298 of 2013 directing defendant to deposit sum of Rs. 4000/- per month by way of compensation for stay of operation and implementation of judgment and decree dated 5th August 2013.

3 In the present proceeding, the respondent-plaintiff filed

Regular Civil Suit No. 508 of 2009 in the court of Civil Judge Senior Division, Solapur for vacant and peaceful possession of the suit premises i.e. Room admeasuring 15 x 20 feet from Municipal House No. 58 in CTS No. 758 and 759 situated at Modikhana, Solapur on the ground that, the defendant had erected unauthorised construction, defendant was in arrears of rent, and change of user. That suit was decreed by the trial court by judgment and decree dated 5th August 2013, directing defendant to handover vacant and peaceful possession of the suit premises to the plaintiff and also pay the arrears of rent.

4 Being aggrieved by the said judgment and decree dated 5th August 2013, the defendant preferred Regular Civil Appeal No. 298 of 2013. In that appeal the defendant preferred the application below Exh. 7 for stay of the operation and implementation of judgment and decree dated 5th August 2013 passed by Trial court. At the time of granting stay to the judgment and decree dated 5th August 2013, the appellate court by impugned order dated 17th December 2013 directed defendant to deposit Rs.4000/- per month in court by way of compensation. Hence the present Writ Petition.

5 The learned counsel for defendant submits that the

appellate court failed to consider the fact that the suit premises is not situated in commercial area. He submits that the suit premises is part of Municipal House no. 58 at Modikhana at Solapur. He submits that the defendants are tenant of the suit premises since 1969. The Rent was Rs.10/- per month. He submits that the appellate court failed to consider the fact that plaintiff has not brought on record any documentary evidence to show the market rent of the suit premises on the date of decree was Rs.4000/- per month. He submits that the compensation fixed by the appellate court is on either side. He submits that it is not possible for the defendant to deposit Rs.4000/- per month by way of interim compensation till the hearing of final disposal of Regular Civil Appeal. He submits that in the interest of justice this Hon'ble Court be pleased to allow the present writ petition by setting aside the part of impugned order dated 17th December 2013 by which the appellate court directed defendant to pay sum of Rs.4000/- till the hearing and final disposal of appeal. He submits that considering the situation of the area in which the suit premises situated, the rent was Rs.10/- per month and as the plaintiff is not providing any amenities to the tenant, this Hon'ble Court be pleased to fix the reasonable

interim compensation during the pendency of the appeal.

6 The learned counsel for petitioner submits that this court by order dated 11th August 2015 granted ad interim relief on condition to deposit the compensation @ Rs.2500/- per month instead of Rs. 4000/- as directed by the impugned order. He submits that the said order is already complied with by the petitioner. The statement is accepted.

7 Though the respondent landlord duly served, no one appeared on behalf of them when the matter called out.

8 The suit premises is situated in a Municipal House No. 58 at Modikhana, Solapur. The plaintiff has not brought on record any evidence to show that the suit premises is situated in a commercial area. Apart from that the plaintiff has not brought on record any documentary evidence to show the market rent of the suit premises was Rs.4000/- per month on the date of passing of the decree by the trial court. In any case at the time of passing ad-interim order on 11th August 2015, this Court directed defendant to deposit sum of Rs.2500/- per month instead of Rs.4000/- per month. Considering these facts, I am of the opinion that petitioner-defendant has made out case for partly allowing the present writ petition.

Hence following order.

- i. Writ Petition partly allowed.
- ii. Impugned order dated 17th December 2013, passed by learned District Judge-3, Solapur below Exh. 7 in Civil Appeal No. 298 of 2013 is modified to the extent that petitioner-defendant to deposit monthly compensation @ Rs.2500/- instead of Rs.4000/- per month as directed.
- iii. Petitioner-defendant to deposit the monthly compensation from August 2013 till the hearing and final disposal of Regular Civil Appeal No. 298 of 2013.
- iv. Arrears of compensation to be deposited by the petitioner-defendant in trial court within 8 weeks from today.
- v. If there is any default on the part of the petitioner-defendant in depositing the arrears and the monthly compensation, interim protection shall stand vacated without referring back to the court and in that case the plaintiff can execute the decree according to law.

- vi. Writ Petition stand disposed of accordingly.
- vii. No order as to costs.

(K. K. TATED, J.)