

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4167 OF 2016

Shri Ashok Eknath Shinde

.. Petitioner

vs.

Dattatray Kashinath Rajmane
since deceased through legal heirs
Sudhir Dattatray Rajmane and Ors.

.. Respondents

Mr.A.B.Tajane for the petitioner

CORAM : K. K. TATED, J.
DATE : APRIL 12, 2016

PC.:

1 Heard the learned counsel for the petitioner.

2 By this petition, under Article 227 of the Constitution of India, petitioner defendant challenges the order dated 4.11.2015 passed by learned District Judge-4, Barshi below Exhibit-5 in Regular Civil Appeal No.71 of 2015 directing petitioner defendant to deposit monthly compensation of Rs.2,000/- from the decision of Suit i.e.28.07.2015 in respect of the suit premises.

3 In the present proceeding, respondent plaintiff filed Regular Civil Suit No.141 of 2005 in the court of Civil Judge, Junior Division at

Karmala for possession of the suit premises i.e. Footwear shop in the name and style as "*Ashok Shoe Mart*" situated at CTS No.2758 admeasuring 11.8 sq.mtr at Karmala, Dist. Solapur. That suit was decreed by the Trial Court on 28.7.2015 on the ground of bonafide requirement of the plaintiff. The Trial Court directed petitioner defendant to hand over vacant and peaceful possession of the suit premises to the plaintiff.

4 Being aggrieved by the decree dated 28.7.2015 petitioner defendant preferred Regular Civil Appeal No.71 of 2015. In that appeal defendant preferred application below Exhibit 5 under Order 41 Rule 5 of the Civil Procedure Code, 1908 for stay of the Judgment and Decree passed by the Trial Court. At the time of staying the Judgment and Decree passed by the Trial Court, the appellate court directed defendant to provide security or deposit Rs.50,000/- in the court and pay monthly compensation of Rs.2,000/-. Hence, the present Writ Petition.

5 The learned counsel for the petitioner submits that by this petition, defendant is challenging clause 2(b) from operative part of the order dated 4.11.2015 passed by the learned District Judge-I, Barshi directing defendant to pay monthly compensation of Rs.2,000/- in respect of the suit premises.

6 The learned counsel for the defendant submits that the impugned order passed by the District Judge is against justice, equity and good conscious. Same is liable to be set aside. He submits that though the

learned District Judge specifically stated in paragraph 5 of the order that respondent plaintiff failed to place on record any evidence to show the market rate of compensation in respect of the suit premises, the court has decided the same @ Rs.2000 per month only on the ground that suit premises is used for commercial purpose and Karmala city is growing market place. He submits that court failed to consider the fact that defendant used to pay rent of the suit premises @ Rs.12.50 per month before passing the the Judgment and Decree by the Trial Court. He submits that the defendant does not have any source of income except the suit premises. He further submits that considering the condition of the suit premises, the monthly compensation determined by the court is on higher side and same be reduced at reasonable rate.

7 I have heard the learned counsel for the petitioner at length. I have gone through the copy of the Judgment and Decree passed by Trial Court on 28.7.2015, application filed by the defendant under Order 41 Rule 5 of the Civil Procedure Code, 1908 and also copy of written statement tendered by the advocate for the petitioner across the bar. It is to be noted that in the present proceeding, the Trial Court held that the respondent plaintiff require the suit premises for their own use. Apart from that, the court also recorded in the impugned order that the suit premises is situated in a commercial area. Not only that the Karmala is a growing market place. On the basis of that the appellate court directed the defendant to deposit the sum of Rs.2,000/- by way of monthly compensation.

8 The Trial Court in paragraph 28 of the the Judgment and Decree

recorded that the defendant is serving in the Market Committee. Paragraph 27, 28 and 39 are relevant for deciding the present Writ Petition which reads thus:

“27) Ld.advocate for the plaintiff argued that, the Sudhir is serving in Bank. His son Revansiddha is helping in garment shop after school time. Sanjay look after entire business of the garment shop naming “Siddheshwar Dresses”. Overall there are 11 family members in the family of plaintiffs. They wanted to expand their garment business in future. The Sudhir and Sanjay are having 4 sons. Those are on the verge of joining the business. Therefore, they are having bonafide need of the suit property for their own use.

28) It has been further submitted that, defendant is serving in Market Committee. He is getting handsome salary. He belongs to Schedule Caste. As per the welfare schemes of the Maharashtra Govt. there is reservation for the S.C.Community in shopping complex of the local authorities. Since 1957 father of plaintiff and defendant had not taken effort to trace out alternative shop for their business. Moreover, comparative hardship would tilt in favour of the plaintiffs than the defendant. So, considering the

bonafide need of the plaintiff possession be handed over to the plaintiff.

39) Motiram Kamble (DW2) tried to support the testimony of the defendant. He is the retired employee of State Bank of India. During his cross examination he admitted that, State Bank of India could provide loan of Rs.5 lakh for the commencement of the business. He shown his willingness to provide necessary help to the defendant. Nivrutti (DW3) during his cross-examination admitted that, Shop No.16 at Jin Ground is reserved for the Schedule Caste. Muniraj Jadhav (DW6) during his cross examination admitted that all the shopping complex of the Municipal Council, Karmala are situated within the middle location of Karmala city.”

9 Bare reading of paragraph 28 and 39 as reproduced hereinabove shows that the petitioner defendant have other source of income and means of earning from business. Inspite of that he has preferred the appeal before the District court challenging the decree passed by Trial Court.

10 The Apex Court in the matter of *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt.Ltd., 2005 (1) SCC 705* and *The State of*

Maharashtra and Anr. vs. Super Max International Pvt.Ltd. and Ors., 2009(9) SCC 772 held that at the time of fixing interim compensation same be fixed on the basis of rent paid by the tenant, ready reckoner and market value of the suit premises.

11 Considering the the Judgment and Decree passed by Trial Court and as recorded by the district court in impugned order dated 4.11.2015 that the suit premises is situated in commercial area, I do not find any reason to interfere with the well reasoned order dated 4.11.2015 passed by learned District Judge-4 Barshi below Exhibit-5 in Regular Civil Appeal No.71 of 2015.

12 Writ Petition stands dismissed. No order as to costs.

JUDGE