

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION (ST) NO.20348 OF 2016
IN
SECOND APPEAL NO. 55 OF 2011

Shobha M.Shiralkar

..... Applicant

VERSUS

**Shailaja R.Shiralkar,
Deceased through heirs and Ors.**

..... Respondents

Mr.Uday Warunjikar, i/b. Mr.Akshay Deshmukh for the Applicant.

Mr.Amit Borkar for the Respondent no.2.

CORAM : R.D. DHANUKA, J.

DATE : 19th SEPTEMBER, 2016

P.C.

By this civil application, the applicant seeks an order and direction against the appellate court not to proceed for recovery action or attachment of the property and/or coercive steps of taking possession till the disposal of the civil application.

2. The applicant was the original plaintiff and had filed a suit for injunction. The suit filed by the applicant was decreed, however was reversed by the first appellate court. The second appeal filed by the appellant is admitted on the substantial questions of law formulated by this court.

3. On 17th April, 2012, this court in Civil Application No.20 of 2011 appointed the Nazir of the District Court Kolhapur as receiver of the suit property with all the powers under Order 40 Rule 1 of the Code of Civil Procedure and directed the Nazir to take formal possession of the suit property. This court however made it

clear that the applicant would continue to remain in physical possession subject to the payment of royalty that would be fixed. This court granted liberty to the respondent to file appropriate application for fixing the royalty of the property in question.

4. The applicant filed a special leave petition against the said order dated 17th April, 2012. The Supreme Court had granted interim stay to the order passed by this court which was subsequently vacated. The special leave petition was disposed off with a direction that the appeal filed by the applicant be heard expeditiously.

5. Pursuant to the said order passed by this court, the respondent filed an application for fixation of royalty before the Court Receiver. A valuation report dated 8th June, 2012 submitted by Mr.Sharad Jagdale, the Architects and the Government Registered Valuers came to be submitted before the Court Receiver. The Court Receiver passed an order on 29th June,2012 fixing the royalty of Rs.15,000/- per month. Additional District Judge - 1 considered the said report of the Court Receiver and refused to interfere with the said order passed by the Court Receiver fixing royalty of Rs.15,000/- per month.

6. The applicant thereafter filed a Civil Application No. 1105 of 2015 and challenged the order dated 8th August, 2012 passed by the learned Ad-hoc District Judge. The appellant also filed a Writ Petition (5288 of 2016) challenging the said order before this court. By an order dated 4th May,2016 this court dismissed the said writ petition with cost quantified at Rs.25,000/- to be paid by the appellant to the 2nd respondent. It appears that after passing of the said order dated 4th May, 2016 passed by this court, the appellant withdrew the Civil Application No.1105 of 2015 and filed the present application.

7. Mr.Warunjikar, learned counsel appearing for the applicant submits that the applicant is widow and is unable to pay royalty amount as decided by this court receiver. He submits that the learned Ad-hoc District Judge has no jurisdiction to pass any order confirming the order passed by the Court Receiver. He invited my attention to the valuation report and would submit that the learned valuer had valued the suit property on the premise as if the said property was required to be sold at such market price. He submits that the entire basis of the valuation submitted by the learned valuer was totally incorrect and discloses non-application of mind. He submits that the applicant has been staying in the suit property in her own right and thus the valuation of the suit property on the basis of the sale value should not be the criteria for the fixation of the royalty. He submits that according to his client, the correct amount of royalty shall be maximum Rs.1,000/-per month and not Rs.15,000/-as ascertained by the learned court receiver.

8. I have perused the record submitted before this court by the applicant. It is not in dispute that by an order passed by this court on 17th April, 2012 in Civil Application No.20 of 2011 the applicant was permitted to occupy the suit property as an agent of the court receiver on payment of royalty has not been set aside by the Supreme Court. The question that arises for consideration of this court is whether the amount fixed by the learned court receiver towards royalty is reasonable and justified or not.

9. A perusal of the valuation report dated 8th June, 2012 submitted by the Government registered valuer indicates that the suit plot is admeasuring 148.70 sq.mtrs.The building is constructed on the suit plot. The built up area of ground floor is about 125 sq.mtrs. and 1st storey is 40 sq.mtrs. The learned valuer after

considering the prevailing market rates of similar land, had determined the market value at Rs.53,30,000/-.

10. A perusal of the order passed by the learned court receiver indicates that the learned court receiver has determined a reasonable rate of royalty at about 3% of the market value determined by the Government registered valuer payable for the use of the plot of land consisting of a bungalow which is most fair and reasonable.

11. Insofar as submission of the learned counsel for the applicant that the learned Ad-hoc District Judge had no jurisdiction to decide the correctness and validity of the order passed by the learned court receiver is concerned, without going into this issue raised by the learned counsel for the applicant, I am of the view that the learned court receiver has after considering the valuation report submitted by the Government registered valuer has rightly determined the reasonable payment of royalty at Rs.15,000/- per month which comes to about 3% of the valuation determined by the Government approved valuer.

12. A perusal of the order passed by this court in the writ petition filed by the applicant indicates that this court has passed severe strictures against the applicant for filing one or the other application before this court. This court has also imposed a cost of Rs.25,000/- against the applicant.

13. In my view the impugned order passed by the court receiver is a reasonable and is not arbitrary. There is no merit in this civil application. The application is devoid of merits and is dismissed with cost quantified at Rs.25,000/- which should be paid by the applicant to the respondent no.2 within two weeks from today.

[R.D. DHANUKA, J.]