

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.908/2008
IN
WRIT PETITION NO.8651/2005

Vilas Sonba Purekar

... Applicant

V/s.

Amar Dattatray Salokhe & Anr.

... Respondents

Mr. Rahul Walvekar for the Applicant

Mr. Ruturaj Pawar i/b. S. S. Patwardhan for the Respondents.

CORAM: K.K. TATED, J.

DATED : APRIL 6, 2016

PC. :

1. Heard the learned counsel for the parties. This Application is made by the landlord for fixing interim compensation payable by the respondents - defendant in respect of the suit premises i.e. 3 rooms admeasuring 8' x 11', 10' x 11' and 11' x 9' situated at CTS No.646, D Ward, Kolhapur Municipal Corporation.

2. In the present proceedings, the applicant plaintiff had instituted Regular Civil Suit No.215/2002 in the court of II Jt. Civil Judge, Senior Division, Kolhapur for vacant and peaceful possession of the suit premises which was in possession of the respondents -defendant tenant. The Trial Court dismissed the suit by judgment and decree dated 10.08.2004.

3. Aggrieved thereby, the plaintiff preferred an appeal before 3rd Additional District Judge, Kolhapur. The appellate court set aside the judgment and decree dated 10.08.2004 passed by the Trial Court and decreed the suit directing the defendants to handover vacant and peaceful possession of the suit premises to the landlord. Being aggrieved by the said decree, the defendant filed the present Writ Petition which was admitted by this court (Coram : P. V. Kakade, J.) on 20.02.2006 and granted interim relief in terms of prayer clause (b) with direction to the defendants to continue to deposit the rent. Hence, the Civil Revision Application.

4. The learned counsel for the applicant submits that the appellate court, by judgment and decree dated 12.07.2005 held that the defendant No.1 made permanent construction in the suit premises without prior permission of the plaintiff. He submits that though the appellate court passed decree on 12.07.2005 directing the defendants to hand over vacant and peaceful possession of the suit premises, same is in possession of the defendants only, as this Hon'ble Court granted interim relief on 20.02.2006. He submits that as on today, the market rental compensation in respect of the suit premises is Rs.5000/- pm. He submits that as per the property tax bill issued by the Kolhapur Municipal Corporation, the plaintiff has to pay Rs.859/- in respect of the entire property being CTS No.646 which consists of 7 rooms. He submits that the property bill for the year 2008-2009 shows the valuation of the entire property to the tune of Rs.13500/-. He submits that this Hon'ble Court be pleased to direct the defendant to deposit the interim compensation in the Trial Court @ Rs.5000/- pm from the

date of judgment and decree passed by the Appellate Court. He submits that if the Civil Application is not allowed, irreparable loss will be caused to the plaintiff .

5. On the other hand, the learned counsel for the respondent defendant vehemently opposed the Civil Application. He filed Affidavit-in-Reply dated 23.03.2016. He submits that the suit premises is in dilapidated condition. He submits that the plaintiff landlord has not carried out any repairs to the suit premises for last several years. In support of this contention, he relies on the photographs Exhibit- B page 14 and 15 to the Affidavit-in-Reply dated 23.03.2016. He further submits that the property tax bill issued by the Kolhapur Municipal Corporation shows that the plaintiff has to pay sum of Rs.859/- p.a. in respect of the entire property i.e. 7 rooms. He submits that the defendant is in possession of only 3 rooms. Therefore, on the basis of the document issued by the Kolhapur Municipal Corporation, the rental compensation cannot be decided in respect of the suit premises. He submits that considering the present condition of the suit premises, there is no question of directing the defendant to pay monthly compensation during pendency of the present Writ Petition @ Rs.5000/- pm. He submits that as on today, the defendant is paying monthly rent of Rs.25/-. Considering the present condition of the suit premises and the rent, this Hon'ble Court be pleased to dismiss the Civil Application. He submits that if the Civil Application is allowed directing the defendant to pay compensation @ Rs.5000/- pm it would be very difficult for the defendant to comply with the said order. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

6. Heard the learned counsel for the parties at length.

7. The Apex Court in the matter of *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt.Ltd., 2005 (1) SCC 705* held that at the time of fixing interim compensation same be fixed on the basis of rent paid by the tenant and market value of the suit premises.

8. In the present proceedings, the appellate court held that the defendant carried out construction of permanent nature in the suit premises and directed the defendant to handover vacant and peaceful possession of the suit premises to the plaintiff. Considering the property tax bill issued by the Kolhapur Municipal Corporation and as the suit premises is situated in the heart of Kolhapur city, I am of the opinion that pending hearing and final disposal of the Writ Petition, the respondent defendant shall pay sum of Rs.500/- pm. i.e. Rs.6000/- p.a. in respect of the suit premises in the Trial Court. It is to be noted that the interim compensation to be paid by the defendant from August 2005 (appellate court's order dated 12.07.2005).

9. Hence, following order is passed:

a. Civil Application is partly allowed.

b. The defendant tenant is directed to deposit the interim compensation in respect of the suit premises in the Trial Court @ Rs.500/- pm. i.e. Rs.6000/- p.a.

- c. The arrears of interim compensation from August 2005 till April 2016 shall be deposited in the Trial Court within 12 weeks from today.
- d. The defendant is directed to deposit the interim compensation from May 2016 on or before 10th day of each calendar month in the Trial Court.
- e. In addition to the interim compensation, the defendant tenant shall continue to deposit the rent in the Trial Court as per order dated 20.02.2006.
- f. If there is default on the part of the defendant tenant to comply with this order, the interim relief granted by this court on 20.02.2006 shall stand vacated without further reference to the court.
- g. If interim compensation is deposited as stated hereinabove, the Trial Court is directed to invest the same in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the Writ Petition.
- h. The plaintiff owner is entitled to withdraw the rent from the Trial Court without furnishing any security.
- i. Civil application stands disposed off accordingly.

(K.K. TATED, J.)