

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8455 OF 2016

(Converted from CIVIL REVISION APPLICATION NO.243 OF 2016)

Rajaram Mahadev Sarang ... Applicant
Vs.
Vithabai Hira Dhone (decd) through her heirs
Prakash Hira Dhone and others ... Respondents

Mr. Manoj Shukla i/b. Mr. Vijay Sitaram Thakur Singh for Applicant.
Mr. Ketan A. Chotani i/b. Mr. J. M. Chodankar for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JULY 13, 2016

P.C. :

Heard Mr. Shukla, learned Counsel for applicant and Mr. Chotani, learned Counsel for respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant, hereinafter referred to as 'defendant', has challenged the judgment and order dated 12.02.2016 passed by the appellate Bench of the Small Causes Court at Mumbai (Bandra) below exhibit-6 in Appeal No.207 of 2010. By that order, the appellate Court allowed the application filed by the defendant for stay of the execution of the decree dated 6th and 7th July 2010 passed in R.A.E.&R. Suit No.5520 of 1985. By the impugned order, appellate Court stayed execution of the impugned decree subject to the defendant depositing in the Court compensation @ Rs.3,000/- per month since the date of the decree till final disposal of the appeal. Defendant is also directed to deposit arrears of monthly compensation @ Rs.3,000/- per month since the date of the decree till February 2016 within two months and to go on depositing regularly the same on or before 15th day of each month. In view thereof, leave to convert C.R.A. into Writ Petition is granted. Amendment shall be carried out on or before 15.07.2016 and the

amended slips shall be made over to the other side.

3. In support of this Petition, Mr. Shukla strenuously contended that the appellate Court was not justified in imposing condition of depositing Rs.3,000/- per month. He submitted that similarly situated tenant, namely, Chandrakant B. Mahadik had filed appeal challenging the decree passed in R.A.E.&R. Suit No.591 of 1996. During the pendency of that appeal, said Mahadik (defendant therein) filed application exhibit-7 for stay of the decree. By order dated 04.07.2014, the appellate Court granted stay subject to said Mahadik depositing Rs.500/- per month.

4. Mr. Shukla, therefore, submitted that the impugned order may be modified so as to permit the defendant to deposit monthly compensation as also arrears @ Rs.500/- per month. He further submitted that defendant is a senior citizen and also on a humanitarian ground, the impugned order may be modified.

5. On the other hand, Mr. Chotani supported the impugned order and submitted that defendant herein cannot claim parity. He invited my attention to paragraph 10 of the impugned order as also paragraphs 7 of the order dated 04.07.2014 passed in an application filed by said Mahadik.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the appellate Court has directed the defendant to deposit Rs.3,000/- per month. Paragraph 10 of the impugned order reads thus,

“10. The main bone of contention between the appellant and respondent is in respect of area of the suit premises. The

appellant in his rejoinder submitted that he is having only 225 sq.ft. in his possession with a loft of 90 ft. The decree is passed on the ground of additions and alterations. If the additional written statement is perused, the appellant has mentioned that the suit premises is admeasuring 15' x 22' which comes to 330 sq.ft. and there is also a loft. Hence, the contention of the appellant that only 225 sq.ft. is in his possession is not correct. The appellant has submitted that suit premises is situated in slum area. However, there is no notification to that filed on record. The advocate of respondent has annexed photograph showing the suit premises alongwith air-conditioner. The respondent has also filed the leave and license agreements in respect of house and shop showing the license fee as Rs.9,000/- and Rs.11,000/- per month respectively. The first agreement is in respect of premises situated in a building. Hence, compensation of Rs.9,000/- per month as reflected in the same will not proper in the circumstances of this case. Another agreement is in respect of shop and license fee is about 11,000/- per month. Even though the same is in suit chawl, but it is in respect of commercial premises. Hence, considering the amount of license fee charged in both the agreements, the photograph filed by the respondent and area in possession of the appellant, compensation of @Rs.3,000/- per month will be just and proper in the circumstances of the case. The appellant is liable to deposit in the court monthly compensation of Rs.3,000/- since the date of decree till final disposal of the present appeal. Accordingly, we answer point No.1 in the affirmative.”

7. As far as the plea of parity is concerned, perusal of the order dated 04.07.2014 and in particular paragraph 7 thereof shows that said Mahadik is in possession of premises admeasuring about 145 sq.ft. As against this, perusal of paragraph 10 extracted hereinabove shows that defendant is in possession of 225 sq.ft. plus 90 sq.ft. loft. In additional written statement, defendant contended that the suit premises admeasures 330 sq.ft. and there is also a loft. The contention advanced by the defendant that the suit premises situate in the slum area was also not substantiated by producing Notification in that regard. Respondent No.1 had produced photograph showing air-conditioner installed in the suit premises. After considering the instances in paragraph 10, the Appellate Court fixed compensation @ Rs.3,000/- per month. For the reasons recorded in paragraph 10, I do not find that the appellate Court

fixed compensation at exorbitant rate. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab