

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 339 OF 2016
IN
CIVIL APPLICATION NO. 611 OF 2014
IN
CIVIL REVISION APPLICATION NO. 652 OF 2013

M/s. Hugo Wachmann India Pvt. Ltd. .. Applicant

In the matter between
M/s. Hugo Wachmann India Pvt. Ltd
and anr. .. Applicants
(Org. Applicants)

vs.

Rasiklal M. Nagrecha and ors. .. Respondents
(Org. Non-Applicants)

Mr. Francisco D'souza for the Applicant.
Mr. S.H. Patel for Respondents.

CORAM : M. S. SONAK, J.
DATE : 11 AUGUST 2016.

P.C. :-

1] By this civil application, the applicant seeks modification of the order dated 20 October 2015, insofar as the order requires the applicant to deposit reasonable compensation at the rate of Rs.70,000/- per month with effect from 1 June 2013, as a condition for availing stay on the execution of eviction decree dated 9 May 2013.

2] Although, the application is styled as civil application, in effect the relief applied for is that of review. Learned counsel for the applicant has submitted that the reliance ought not to have been placed upon the decision of the Hon'ble Supreme Court in case of *State of Maharashtra and anr. Vs. Super Max International Private Limited and anr. - (2009) 9 SCC 772*, because in the said decision, there were atleast three authorities, who had held against the tenant. Learned counsel submitted that in the present case, at least one of the authorities, i.e., trial court, has held in favour of the applicant-tenant. It is further submitted that the valuation has failed to take into consideration the circumstance that the premises were 75 years old. Learned counsel further submitted that the landlord in the present case has made a false statement that the rents/other dues were regularly being paid to the Mumbai Port Trust, which is the original lessor. In this regard, communication from the Mumbai Port Trust was relied upon. Learned counsel submitted that since the respondent-landlord, in the present case, has come up with a false statement, the amount of reasonable compensation ought to be reduced.

3] In my judgment, the institution of this civil application constitutes an abuse of process of review jurisdiction. There is an eviction decree already made against the applicant. The applicant vide order dated 20 October 2015, of which, review is applied for, has already secured interim reliefs. On basis of such interim relief, the applicant is enjoying the suit premises. The applicant, however, refusing to deposit reasonable compensation and in order to assist such refusal, this review petition has been instituted.

4] The grounds raised by the review petitioner hardly constitute grounds sufficient for entertainment of review petition. The grounds, hardly constitute any error apparent on the face of record. The manner in which the petitioner/applicant seeks to distinguish the decision in case of *Super Max International Private Limited (supra)*, is quite misconceived. The fact remains that even in this case, there is an eviction decree operating against the applicant. The circumstance that the premises are 75 years old has been taken into consideration. It cannot be said that the respondent-landlord have made any false statement or derived any benefits on basis of misstatements. In any case, this is hardly a ground for reducing the amount of reasonable compensation which has been determined

after giving full opportunity to all the parties. The basis of such determination is made clear in the order itself. It is apparent that the applicant wants to continue in possession of the suit premises, but without complying with the conditions subject to which the interim relief came to be obtained by the applicant. For this reason, it is quite clear that the applicant is only interested in abusing the review jurisdiction of this Court.

5] In terms of the order dated 20 October 2015, since, the applicant has defaulted the payment of reasonable compensation, the interim order stands vacated. The learned counsel for the landlord has stated that though execution application has already been filed, the execution has not proceeded because the original records are before this court. The original records may be sent by the Registrar forthwith to the execution court.

6] Although, the applicant, really deserves no indulgence in this matter, as a last chance, the applicant is granted liberty to deposit the arrears towards reasonable compensation in this court within a period of four weeks from today. Further, the petitioner/applicant, if it chooses to, is directed to file an undertaking in this court, within a

period of one week from today that such arrears will be deposited within a period of four weeks from today. If such undertaking is filed within a period of one week from today, the execution may be deferred by additional three weeks. Copy of such undertaking to be furnished to the learned counsel for the respondent-landlord before the same is filed in the Registry. However, if no such undertaking is filed, within one week, the execution is to proceed. In any case, if the entire arrears are not deposited within four weeks, even despite the filing of undertaking, the execution is to proceed.

7] The applicant/petitioner to pay costs quantified at Rs.10,000/- (Rs. Ten Thousand only) within a period of one week from today.

8] The civil application is dismissed with costs, as aforesaid.

(M. S. SONAK, J.)

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