

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3858 OF 2016

Mr. Sudhakar Pundalik Shetye ..Petitioner.
Vs

Mr. Arvind Pandurang Nagvekar, .. Respondents
since deceased, through heirs,
1(a) Mrs. Rupali Arvind Nagvekar
and Ors.
.

Mr. Prakash G. Lad, Advocate for Petitioner.

Mr. P.J.Thorat , Advocate for Respondents no.2 and 3.

CORAM : R.G.KETKAR,J.
DATE : 01/07/2016

PC:

1. Not on Board. At the request of Mr. Lad, taken up for admission. Heard Mr. Prakash Lad, learned counsel for the petitioner and Mr. P.J.Thorat, learned counsel for the respondents no.2 and 3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 3.3.2016 passed by the Appellate Bench of the Small Causes Court at Bombay, below Exhibit-6 in Appeal No.102 of 2011. By that order, the Appellate Court allowed the application filed by the petitioner-appellant, hereinafter referred to as 'defendant', under Order 41, Rule 5 of C.P.C. for staying execution

of the Judgment and decree dated 19.9.2011 passed by the learned Judge presiding over Court Room no. 26 of the Small causes Court in R.A.E.Suit No.1841 of 1997. The Appellate Court granted stay subject to the condition of the defendant depositing the sum of Rs.10,000/- per month from the date of decree, i.e. 19.9.2011, as compensation for the use and occupation of Room no.2 admeasuring 250 sq.ft on the ground floor of Saroj- Nalini Niwas, Veer Savarkar Road, Prabhadevi, Mumbai (for short, 'suit premises') during the pendency of the Appeal. The defendant is further directed to deposit the arrears of compensation either in lumpsum or in three equal monthly installments from today, i/e/ 3/3/2016 payable on or before 5th day of each calender month. On such deposit is being made, Office is directed to invest the amount in fixed deposit of one year extendable thereafter on yearly basis till further orders. The defendant shall not part with possession of the suit premises or to create third party interest in respect of the suit premises during pendency of the Appeal.

3. In support of this petition, Mr. Lad strenuously contended that the suit premises admeasures 170 sq.ft. The petitioner's financial condition is extremely weak. He is a retired mill worker. While granting stay, the Appellate Court has directed to deposit exorbitant amount of compensation at the rate of Rs.10,000/- per month. He submitted that the suit premises is one room

tenement with two rear varandahs, without attached W.C. There is no separate water connection in the tenement. Even modern amenities are not available. Water is fetched from the common tap and there is common W.C. for the entire building. The building where the suit premises is situated, is constructed prior to 1940 and it has been repaired three times. There is leakage and seepage problem in the suit premises. He has taken me through the reply filed in August 2014 as also photographs.

4. On the other hand, Mr. Thorat supported the impugned order. He has taken me through the application Exh.6 filed by the petitioner as also the reply filed on behalf of respondents no.2 and 3. He submitted that respondents no.2 and 3 have brought material on record to substantiate that they are entitled to compensation at the rate of Rs.25,000/- per month. As against this, the petitioner has not brought any material on record to substantiate that the material produced by respondents no.2 and 3 are not reliable.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the application Exh.6 shows that the applicant has simply prayed for stay of execution of the decree without giving details about the condition of the suit premises. In paragraph 3 what is contended is that the

requirement pleaded by the respondents is neither reasonable nor bona fide. Respondents no.2 and 3 have filed reply. In paragraph 5, it is specifically asserted that the suit premises are admeasuring 250 sq.ft which includes two varandahs, one on the front side and one on the rear side, situate in a prominent residential area i.e. Prabhadevi (Dadar). Respondents no. 2 and 3 have also produced on record the property Index of residential premises in the city of Mumbai published in Supplement Times Property of the Times of India dated 3.12.2011. They also produced instance of Leave and Licence Agreement in respect of Flat no.7 of Kalpatru building situate in Prabhadevi. As against this, the petitioner has not produced any material on record.

6. Mr. Lad submitted that the suit premises does not have attached W.C. The suit premises does not have separate water connection and also there are no modern amenities. Water is required to be fetched from the common tab and there is no common W.C. for the entire building. However, this is coming for the first time in supplementary affidavit to rejoinder as is evident from paragraph 1 of the reply of August 2014. In other words, while filing application Exh.6, the petitioner did not bring these facts on record.

7. While granting stay, the Appellate Court has considered that the suit premises is admeasuring 250 sq.ft as also taking

into account paying capacity of the petitioner. As the suit premises is situate in Prabhadevi, the Appellate Court fixed the compensation at Rs.10,000/- per month.

8. After considering the material on record, I do not find that the Appellate Court committed any error in passing the impugned order. Impugned order is purely discretionary and is based on material on record. It cannot be said that the impugned order is perverse or that is based on no material or is contrary to material on record. Petition fails and the same is dismissed.

9. At this stage, Mr. Lad prays for time to comply the impugned order. He states that the arrears as per the impugned order comes to Rs. 6,00,000/-. He, therefore, seeks three months time to comply the impugned order. He invited my attention to the order dated 11.4.2016 and submitted that by that order this Court has stayed the impugned order. Mr. Throat submits that three months time may be given subject to condition that no further extension shall be sought by the petitioner.

10. In view thereof, notwithstanding dismissal of the petition, the time stipulated in the impugned order for depositing arrears of compensation upto 31.3.2016 is extended by three months from today with express understanding that no application for extension will be made or entertained by this court. It is also expressly made clear that the petitioner will go on depositing

monthly Rs.10,000/- from 1.4.2016 on or before 5th day of the succeeding months under intimation in writing to Advocate for respondents no.2 and 3 . Order accordingly.

(R.G.KETKAR, J.)