

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7661 OF 2016

Shri Ganesh V. Shetty (Since Deceased)	]	
1(a) Smt. Vasanthi Ganesh Shetty, and Anr.	]	... Petitioners

Versus

Shitla Prasad Gobindram Yadav	]	
(Since Deceased)	]	
1(a) Smt. Yashodadevi Wd/o Shitlaprasad	]	
Yadav and Ors.	]	... Respondents

Mr. P. J. Thorat for Petitioners.

Ms. Harbans Kaur i/b M/s. K. P. Tiwari & Co. for Respondents.

CORAM :- R. G. KETKAR, J.
DATE :- SEPTEMBER 01, 2016

P. C. :-

1. Heard Mr. P. J. Thorat, learned Counsel for petitioners and Ms. Harbans Kaur, learned Counsel for respondents, at length.

2. By this petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and Order dated 02/03/2016 passed by the Appellate Bench of the Small Causes Court below Ex..37 in Appeal No.113 of 2012. By that order, the Appellate Court rejected the application filed by the petitioners for setting aside

warrant of possession dated 06/10/2015 issued in Execution Application No.109 of 2014 and for restoration of possession of Room No.2 in Ramdas Yadav Chawl No.1, Mohili Village, Sakinaka, Mumbai - 400 072 (for short, 'the suit premises'), as also seeking permission to deposit arrears of compensation from 04/05/2011 @ Rs.5,000/- per month till the disposal of the appeal and for temporary injunction restraining the respondents from parting with possession or creating third party interest or tenancy rights in respect of the suit premises.

3. In support of the petition, Mr. Thorat submitted that the suit instituted by the respondents was decreed on 04/05/2011. Aggrieved by that decision, the petitioners preferred an appeal. During the pendency of the appeal, the petitioners took out application under Order 41 Rule 5 of CPC for stay of the Trial Court's decree. The Appellate Court granted stay subject to depositing compensation @ Rs.2,000/- per month from the date of decree till the disposal of the appeal. Aggrieved by this decision, the petitioners preferred writ petition in this Court. By consent of the parties, petition was allowed on 30/06/2015. This Court permitted parties to place material on record for the purpose of determining compensation. This Court set aside the order of the Appellate Court only to the extent it determined compensation @ Rs.2,500/- per month.

4. After remand, the Appellate Court passed order on 19/08/2015 and directed the petitioners to deposit compensation @

Rs.5,000/- per month from 04/05/2011. The petitioners were given 4 weeks time to deposit the arrears, failing which the stay granted was to stand vacated automatically. He submitted that at the time of passing order after remand, the Advocate for petitioners was not present. The petitioners were not aware of passing of the order by the Appellate Court. It was only when the respondents executed the decree and obtained possession on 19/10/2015, the petitioners acquired knowledge of passing of the order by the Appellate Court on 19/08/2015. The petitioners immediately filed application Exh.37 on 27/11/2015 for restoration of possession. He submitted that petitioner no.1 is a widow and is doing domestic work. The petitioners have somehow collected amount of Rs.2,80,000/- from their community members and deposited arrears of compensation up to 31/12/2015 on 15/12/2015. He has taken me through the application made by the petitioners at Exh.37 and submitted that the petitioners are without any shelter. On account of the negligence on the part of the Advocate, they should not suffer and the suit premises may be restored to the petitioners. Even the petitioners may be appointed as agents of the Court Receiver on such terms and conditions as this Court deems fit and proper so as to secure interest of the respondents.

5. On the other hand, Ms. Harbans Kaur supported the impugned order. She submitted that at the instance of the petitioners, this Court had remitted the matter to the Appellate Court and gave liberty to the parties to place material on record for determining

compensation. This Court directed the Appellate Court to pass fresh order within a period of 4 weeks. Though liberty was given to the petitioners, no evidence was adduced before the Appellate Court. In fact, the petitioners did not even file reply to Exh.34 filed by the respondents on 14/07/2015 for producing the material on record. Application Exh.34 proceeded without any reply. On 03/08/2015, the application Exh.34 was allowed. Advocate for petitioners remained absent and no arguments were advanced on their behalf. After considering the material on record, the Appellate Court fixed the compensation @ Rs.5,000/- per month and granted one month time to deposit the arrears of rent. However, the petitioners did not deposit the amount as ordered by the Appellate Court. It is only after filing of the application on 27/11/2015, the petitioners have deposited the amount on 15/12/2015. In other words, there is non-compliance of order passed by the Appellate Court. The respondents executed warrant of possession and obtained possession of the suit premises on 19/10/2015. Ms. Kaur submitted that no case is made out for interference with the impugned order.

6. I have considered the rival submissions. I have also perused the material on record. As noted earlier, by order dated 30/06/2015 of this Court, order passed by the Appellate Court fixing compensation @ Rs.2,000/- was set aside. The parties were given liberty to place material on record for the purpose of determination of compensation. The Appellate Court was directed to pass fresh order within a period of 4 weeks.

7. Perusal of the impugned order shows that the petitioners did not adduce any material for fixation of compensation. Not only that, the respondents filed application Exh.34 producing the material on record. The petitioners did not file reply to that application. Application Exh.34 was allowed on 03/08/2015. After considering the material produced by the respondents, the Appellate Court fixed compensation @ Rs.5,000/- per month. The operative part of the order dated 19/08/2015 reads thus :-

- “1. The application is allowed as under.*
- 2. The execution and operation of the impugned decree dated 04.05.2011 passed by the Trial Court to the extent of the possession is hereby stayed till the disposal of the appeal against the appellants/legal heirs of original defendant No.2 subject to following terms and conditions.*
- 3. The applicants/legal heirs of original defendant No.2 shall deposit compensation in respect of the suit premises @ Rs.5,000/- per month from the date of decree i.e. w.e.f. 04.05.2011 upto August, 2015 within one month from the date of passing of this order in the court.*
- 4. The appellants/legal heirs of original defendant No.2 shall continue to deposit the compensation at the same rate i.e. @ Rs.5,000/- per month for the period with effect from September, 2015 and onwards till disposal of this appeal, on or before 10th day of each succeeding month in this Court.*

5. *The Registrar of the Small Causes Court, Mumbai is hereby directed to invest the amount of compensation as and when deposited by the appellants/legal heirs of original defendant No.2 in the Court in the Fixed Deposit for a term of at least one year in any Nationalized Bank immediately on the very next working day in accordance of law and as per rule.*
6. *If, the appellants/legal heirs of original defendant No.2 failed to comply with this order as directed, then, stay granted by this order automatically stands vacated.*
7. *The amount of compensation already deposited by the appellants, if any, be adjusted.”*

8. Perusal of the above order shows that the petitioners were directed to deposit compensation @ Rs.5,000/- per month from 04/05/2011 up to August 2015 within one month from the date of order. It was made clear that in the event of failure on the part of the petitioners to comply the order, stay granted shall automatically stand vacated.

9. It is really unfortunate case. Earlier, the Appellate Court decided application Exh.14 on 22/12/2014 made by the petitioners for staying eviction decree subject to the petitioners depositing compensation @ Rs.2,000/- per month from 04/05/2011 up to December 2014 within one month and further to go on depositing the compensation @ Rs.2,000/- per month till the final disposal of the

appeal. The petitioners filed Writ Petition No.1167 of 2015 in this Court challenging the order dated 22/12/2014. By order dated 30/06/2015, this Court disposed of the petition and set aside determination of compensation @ Rs.2,000/- per month. This Court set aside that order on the ground that neither parties had placed on record any material for the purpose of such determination. This Court, therefore, gave liberty to the parties to place on record material which will assist the Appellate Court in determining the amount of reasonable compensation. As noted earlier, the petitioners did not place any material on record. The respondents, however, produced material by filing application Exh.34. The Appellate Court fixed compensation @ Rs.5,000/- per month. Thus, the petitioners were placed in worse situation as earlier the Appellate Court had stayed the eviction decree subject to the petitioners depositing reasonable compensation @ Rs.2,000/- per month. Now after the remand, in view of the material placed by the respondents, the Appellate Court fixed compensation @ Rs.5,000/- per month.

10. It is not in dispute that the petitioners did not deposit the amount as ordered by the Appellate Court. The respondents have executed the decree on 19/10/2015. It is only thereafter the present application is moved on 27/11/2015 and the amount as ordered by the Appellate Court, is deposited on 15/12/2015. The Appellate Court has considered the reasons given by the petitioners for non-compliance and the same were not accepted. For the reasons recorded in paragraphs 9 to 11, 14 and 15 of the impugned order, I do

not find that any case is made out for interfering with the impugned order. The Appellate Court has accepted the written undertaking given by the respondents that they will not create third part interest till the disposal of the appeal. The said undertaking is accepted by the Trial Court. In view thereof, the petition is dismissed. Having regard to the fact that the petitioner no.1 is a widow and is doing domestic work and having further due regard to the fact that they are dispossessed from the suit premises on 19/10/2015, the Appellate Court is requested to decide the appeal within a period of three months from the date of production of authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)