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

**WRIT PETITION NO. 4016 OF 2016**

M/s Maruti Ply & Interior Petitioner
Vs
Dena Bank and Ors .. Respondents

Mr. V.Y.Sanglikar i/b Mr. K.N.Kandekar, Advocate for Petitioner.

Mr. Rajesh L. Shethia and Mr. Chetan R. Shah, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 15/04/2016

**PC**:

1. Heard Mr.V.Y.Sanglikar, learned counsel for the petitioner and Mr. Rajesh L. Shethia, learned counsel for respondent no.1 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 24.2.2016 passed by learned Principal Judge, Greater Mumbai in Stay Application No.14 of 2016 in Misc.Appeal No.6 of 2016. By that order, the learned Principal Judge stayed the execution of the judgment and order dated 30.12.2015 passed by respondent no.2-Estate Officer, subject to the petitioner depositing with the first respondent arrears of damages at the rate of Rs.56,190/- per month from 26.11.2008 to January 2016 with interest at the rate of Rs.9% per annum, within six weeks from the date of the order; further directing the petitioner to go

on depositing with the first respondent damages at the rate of Rs. 56,190/- per month from February,2016 onwards within ten days after completion of each calender month. The amounts, so deposited by the petitioner with the first respondent towards arrears of damages and future damages, are subject to final decision of the Appeal. It was further made clear that if the petitioner fails to deposit the amount within the stipulated time, the stay granted shall stand vacated.

3. In support of this Petition, Mr. Sanglikar strenuously contended that the order passed by respondent no.2 is nullity and is liable to be quashed and set aside. He invited my attention to the note dated 22.2.2013 submitted by Assistant General Manager (GAD), who was appointed as Estate Manager in the present case. Respondent no.2 recommended initiating eviction proceedings against the petitioner under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, (for short, 'Act'). The petitioner is in possession of Shop no.4 on the Ground floor, Dena Bank Building, 3rd Pasta Lane, Colaba Causeway, Mumbai-400005 (for short, 'suit premises'). Respondent no.2 and Chief Manager (GAD) as also General Manager (Treasury ID/GAD) sought approval of the Board to initiate eviction proceedings against all tenants of residential premises spread in the city of Mumbai as stated therein. With the above action as proposed, it was recommended that all commercial as well as residential

tenanted premises will cover under the Act as on date. In short, Mr. Sanglikar submitted that though permission to initiate eviction proceedings against the unauthroised occupants of residential premises spread in the City of Mumbai was sought under the Act, the recommendation so made by respondent no.2 and others clearly covered all commercial premises under the Act as on date which will include the suit premises.

4. Mr. Sanglikar relied upon the decision of this Court in Gajanan Shivram Lele Vs. Dena Bank, 2015 (5) ALL MR 54. He, in particular, invited my attention to paragraph 24 of the said decision wherein this Court considered the note dated 22.2.2013 to which respondent no.2 is a party-signatory. This Court issued injunction restraining respondent no.2 from acting as an Estate Manager in the matters of eviction against the petitioners.

5. Mr. Sanglikar submitted that respondent no.2 decided the proceedings on 30.12.2015. Before the second respondent, decision of this Court in the case of Gajnan Shivram Lele (supra) was cited. He submitted that respondent no.2 misinterpreted the said decision and carried impression that the petitioner contended that the Estate Officer had no jurisdiction. He submitted that the petitioner contended that as the recommendation was made by respondent no.2 along with others, he is having bias against the petitioner and, therefore, he should not conduct the proceedings. In fact, respondent no.2

ought not to have conducted the proceedings in view of the decision of this Court in the case of Gajanan Shivram Lele (supra).

6. Mr. Sanglikar invited my attention to application for stay and in particular paragraph 6. In that paragraph, it is contended that respondent no.2 was working as Assistant General General Manager (GAD) in the year 2013 who had moved the matter for approval for initiating eviction proceedings under the Act against occupants. Respondent no.2 was biased and could not have acted as a judge in his own cause. He submitted that though this contention was specifically raised in the application, the same was not considered in the impugned order. He, therefore, submitted that the impugned order clearly shows non-application of mind. Mr Sanglikar further submitted that respondent no.2 was not justified in conducting the proceedings.

7. Mr. Sanglikar further submitted that while granting stay, the appellate court ought to have directed the petitioner to deposit reasonable compensation. The appellate court, however, directed the petitioner to deposit compensation at market rate. The remedy of Appeal is rendered illusory. He has invited my attention to the report dated 22.10.2013 submitted by Mr. S.R. Paradkar on behalf of the petitioner and submitted that Architect had recommended Rs. 147/- per sq.ft per month as a market rate for the suit premises. He submitted that the present monthly rent

is Rs.980/- and ten times of this monthly rent would be reasonable. The rent cannot be related to market rate. Lastly, he submitted that the petitioner is a tenant of the suit premises prior to nationalisation of the first respondent and is, therefore, governed by the decision of the Apex Court in the case of Dr. Suhas H. Pophale Vs. Oriental Insurance Co. Ltd and its Estate Officer, AIR 2014 S.C. 1509. He, therefore, submitted that the learned Principal Judge was not justified in passing the impugned order directing the petitioner to pay arrears of damages at the rate of Rs. 56190/- per month.

8. On the other hand, Mr. Shethia supported the impugned order. Mr. Shethia submitted that the reliance placed on the note dated 22.2.2013 and the decision of this Court in the case of Gajanan Shivram Lele (supra) is wholly misconceived. He submitted that the present petitions are concerning the commercial premises. Perusal of note dated 22.2.2013 shows that permission to initiate proceedings under the Act was sought against the unauthorized occupants of **residential premises**. He submitted that paragraph A containing background records that respondent no.1-Bank has already initiated eviction proceedings under the Act against the unauthroised occupants of commercial premises in respect of Dena Bank building, Colaba, among other buildings. The suit premises is situate in Dena Bank Building, Colaba. In other words, he submitted that the

contention advanced on behalf of the petitioners that respondent no.2 Estate Officer had bias against them, is wholly misconceived. He invited my attention to the valuation report submitted by the first respondent in respect of the suit premises. In the valuation report submitted by the first respondent, the valuer has fixed Rs.375/- per sq.ft per month after considering comparable instances on the basis of leave and licences agreements in respect of the premises in the vicinity. As against this, learned Principal Judge has directed the petitioner to deposit compensation at the rate of Rs.147/- per month which is even less than 50% of the recommendations made by Mr. Kazi Razziuddin Gulam Dastagir, first respondent's valuer. He further disputed the contention raised by Mr. Sanglikar that the petitioner is a tenant of the suit premises from pre-nationalization of the first respondent.

9. 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, it is not in dispute that the petitioner is in possession of shop no.4, admeasuring 385 sq.ft. carpet area. The shop is situate on the ground floor of Shahid Bhagatsingh Road, Colaba. The suit premises is facing the road.

10. On behalf of the first respondent, the valuer has submitted valuation report dated 22.2.2013. Perusal of that report shows

that the valuer had visited the location and also considered comparative instances of the premises in the locality and recommended market rate at Rs.375/- sq.ft per month. As against this, on behalf of the petitioner, Shri S.R Paradkar, Architect had submitted report dated 22.10.2015. The valuer has issued certificate to the effect that market rent of shop premises as on 16.10.2015 is Rs.147/- per sq.ft of Built up area which is **fair and reasonable**. In other words, the valuer appointed by the petitioner also recommended that Rs. 147/- per sq.ft is fair and reasonable rent.

11. In the present case, Mr. Sanglikar relied upon the decision of this Court in the case of the Oriental Insurance Company Ltd vs. Smt Sudha H. Pophale, decided on 30.10.2012 (Coram: S.C.Dharmadhikari, J.). In paragraph 9 of that report, this Court has observed that the appellate authority can derive assistance from Order XLI Rule 5 and analogous powers and guide itself when determining the conditions. Ultimately, the enforcement of the order passed is to be stayed and on such conditions as the appellate officer deems fit. That does not mean that the power is to be exercised arbitrarily and capriciously but must be guided by such terms as could be imposed in the given facts and circumstances. Thus, the Appellate Authority while granting stay has to impose such terms and conditions depending upon the facts of each case.

12. As noted earlier, in the present case, the suit premises is situate at Colaba which is in the heart of city. The suit premises is commercial premises facing the road. The valuer appointed by the petitioner has also certified Rs.147/- per sq. ft. per month is a fair and reasonable. In view thereof, I do not find that the learned Principal Judge has committed serious error in exercising discretion. In my opinion, the learned Principal Judge has properly exercised discretion which does not warrant invocation of powers under Article 227 of the Constitution of India. Hence, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed.

13. Before parting, it is necessary to place on record that during the course of hearing of the petitions, I suggested learned counsel appearing for the parties that I will set aside the orders passed by the second respondent, thereby, allowing appeals preferred by the petitioner with further direction to the second respondent to start de-novo proceedings from the stage of framing of issues. It was also made clear that the Court will keep all contentions of the parties on merits open. It is necessary to record that Mr.Shethia fairly accepted the suggestion and submitted that Mr. Kailashnath is appointed as Estate Manager and he will conduct the proceedings from the stage of framing of the issues. At one stage, Mr. Sanglikar, on instructions, accepted the suggestion. However, lateron Mr. Sanglikar proceeded to

argue the matter on merits. In view thereof, I have considered the submissions advanced by the parties on merits.

14. Mr. Sanglikar relied upon the order passed by this Court in the case of Gajanan Shivram Lele (supra), to contend that the proceedings before the Estate Officer are vitiated on the ground of bias. He also agreed for depositing the amount as per clause 1(i) of the operative part of the order. He submitted that clause 1(ii) of the order be set aside. Mr. Shethia accepted this suggestion as well. Mr. Shethia submitted that the reliance placed on the note dated 22.2.2013 and the decision of this Court in the case of Gajanan Shivram Lele (supra) is wholly misconceived. He submitted that the present petitions are concerning the commercial premises. Perusal of note dated 22.2.2013 shows that permission to initiate proceeding sunder the Act was sought against the unauthorized occupants of **residential premises**. He submitted that paragraph-A containing background records that respondent no.1-Bank has already initiated eviction proceedings under the Act against the unauthroised occupants of commercial premises in respect of Dena Bank building, Colaba, among other buildings. The suit premises is admittedly situate in Dena Bank Building, Colaba. As the Appeal is pending before the Appellate Authority, I refrain from going into this aspect. All the contentions of the parties in that regard are expressly kept open. The Appellate Authority will

consider this contention and pass appropriate orders uninfluenced by the observations made herein.

15. At this stage, Mr.Sanglikar prays for direction to the Appellate Authority to dispose of the Appeal in a time bound manner. He further seeks eight weeks time to comply the impugned order. In view thereof, notwithstanding dismissal of writ petition, the impugned order is stayed for a period of eight weeks from today. Learned Principal Judge is requested to dispose of the Appeal as expeditiously as possible and in any event within 4 months from today on production of authenticated copy of this order. Order accordingly.

(R.G.KETKAR, J.)