

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

WRIT PETITION NO.4028 OF 2016

Mr.Abbas Ali Shetodkar Nasrin & Anr. ... Petitioners

V/s.

Shri Sudhakar Tukaram Bidkar & Ors. ... Respondents

Mr. S. C. Wakankar for the petitioners.
Mr. Pratap Patil for respondent No.1.

CORAM: K.K. TATED, J.
DATED : 22nd APRIL, 2016

P.C. :

. Heard learned counsel for the parties.

2. By consent of both the parties, matter is taken up for final hearing at the stage of admission itself.

3. By this petition, under Article 227 of the Constitution of India, the petitioner/defendant challenges the order dated 2/3/2016 passed by the learned District Court, Pune in Civil Appeal No.714/2013 directing the petitioner/defendant to pay sum of Rs.65,000/- by way of compensation in respect of rent of the suit property from the date of judgment/decreed passed by the Trial Court on 4/10/2013.

4. In the present proceeding, the respondent/plaintiff filed the Civil Suit No.566/2006 for vacant possession of the suit premises i.e. 8 rooms on the ground floor and two rooms on the first floor situated at 908, Sinegog Street, Pune. The suit was decreed by the Trial Court by judgment and decree dated 4/10/2013 on the ground that the defendant sublet the suit premises to third person. Appeal preferred by the petitioner/defendant before the District Court was admitted. During the pendency of the appeal the plaintiff/landlord preferred application below Exh.13 claiming sum of Rs.1,30,000/- by way of compensation for the suit premises. That application was partly allowed by the Appellate Court on 2/3/2016. Hence, the present writ petition.

5. Learned counsel for the defendant submits that the Trial Court erred in coming to the conclusion that the defendant is liable to pay sum of Rs.65,000/- p.m. by way of compensation in respect of the suit property to the plaintiff. He submits that the Appellate Court failed to consider that the defendant is in possession of 1264 sq. ft. area. He submits that the agreed rent of the suit premises was Rs.440 p.m. He further submits that the building in which the suit premises is situated was constructed in the year 1969. He further submits that the Court below failed to consider the fact that the plaintiff placed on record the value of the suit property to the extent of Rs.2.35 lakhs only. He submits that the plaintiff failed to produce on record any documentary

evidence to show the current market rent/ license fee in respect of similarly situated property. He submits that the plaintiff claim compensation @ Rs.1,30,000/- p.m. on the basis of area. He submits that though the Appellate Court held that compensation cannot be fixed on the basis of ready reckoner, at the time of fixing the compensation the appellate court has considered the same. He submits that it is very difficult for the defendant to pay compensation @ Rs.65,000/- p.m. till the pendency of the appeal. He submits that if the said order is not set aside, irreparable loss would be caused to the defendant. He submits that the defendant is ready and willing to pay reasonable compensation during pendency of the trial.

6. On the other hand, the learned counsel for the plaintiff vehemently opposed the present writ petition. He submits that the District Court has considered the evidence on record correctly and decided the quantum of compensation payable by the defendant per month. He submits that as of today, the defendant is doing hotel business. He submits that the suit property is situated in prime locality. Hence, there is no substance in the present Writ Petition and the same be dismissed with costs.

7. I have heard both the sides at length. It is to be noted that the building in which the suit premises is situated is of the year 1969. Original rent was Rs.440/- per month. Not only that in the present proceeding the Appellate Court has directed to pay the

said compensation to the plaintiff. That cannot be allowed. Compensation is required to be deposited in the Court only.

8. Considering the decision in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd., 2005(1) SCC 705* reasonable compensation is required to be fixed during pendency of the appeal.

9. Considering this fact, in my view instead of Rs.65,000/-, the defendant is required to deposit sum of Rs.50,000/- per month from the judgment decree dated 4/10/2013 passed by the Trial Court. Hence, the following order is passed:

ORDER

(i) Order passed by the District Judge, Pune below Exh.13 in Regular Suit No.714/2013 is modified to the extent that the defendant shall deposit sum of Rs.50,000/- p.m. by way of compensation in the Appellate Court from the date of judgment/decree dated 4/10/2013.

(ii) The defendant shall deposit the agreed rent of Rs.440 per month in the Appellate Court on or before 10th of each month.

(iii) The defendant shall clear arrears of compensation as well as rent within 6 weeks from today.

(iv) If compensation is deposited within the stipulated time as stated above, the Appellate Court is directed to invest the same in

Fixed Deposit of any Nationalized Bank initially for one year and the same to be continued till hearing and final disposed of appeal.

(v) If rent is deposited within the stipulated time as stated above, the plaintiff is entitled to withdraw the same without furnishing any security.

(vi) The defendant is restrained from creating any third party right, title and interest in the suit property till hearing and final disposal of Civil Appeal No.714/2013.

(vii) If there is any default on the part of the defendant in compliance of this order, liberty is granted to the plaintiff to move to the Appellate Court for appropriate directions.

(viii) Considering facts and circumstances of the case, hearing of Civil Appeal No.714/2013 pending in the Court of District Judge, Pune is expedited.

(ix) Writ petition is disposed of accordingly.

(K.K. TATED, J.)