IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1666 OF 2016
IN
WRIT PETITION NO. 4799 OF 2015

Life Insurance Corporation of India. ... Applicant.
In the matter between
Maharashtra Mineral Corporation Ltd.
and others. ... Petitioners.
V/s.
Life Insurance Corporation of India
and others. ... Respondents.

Mrs.Madhubala Kajle i/b. D.B.Pereira for the applicant.

Anil Anturkar, Senior Advocate with Anup N. Deshmukh, Sameer Jadhav and Ajinkya Udame i/b. V.A.Gangal for the petitioners.

CORAM : D.H.WAGHELA, C.J.

DATE : 8th August 2016.

P.C. :

This civil application is filed by original respondent No.1-Life Insurance Corporation of India (LIC) in the main writ petition filed by the petitioners, expressly invoking Article 227 of the Constitution, to call into question the order dated 17th March 2015 of the Bombay City Civil Court in Misc.Civil Appeal No.75/2005, which appeal was also filed by the petitioners therein. The order in that appeal reads as under:

> "1. Misc. Appeal No.75/2005 is dismissed.
> 2. The order of eviction of the appellants and respondent Nos.3 and 4 from over the enquiry premises is confirmed.
> 3. Misc. Application No.79/2011 is allowed.
> 4. Misc. Appeal No.74/2005 is allowed.
> 5. The impugned order directing the appellants and respondent Nos.3 and 4 to pay damages, is set aside.
> 6. The matter is remanded to the learned Estate Officer for deciding the quantum of damages afresh subject to the observations made in connection with point No.7 above.
> 7. The parties shall appear before the learned Estate Officer on 31.03.2015.
> 8. The learned Estate Officer shall decide the matter within 3 months from 31.03.2015.
> 9. The time of two months is granted to the appellants to vacate the enquiry premises."

2. According to learned counsel for the original petitioners, the eviction application filed before learned Estate Officer is also decided against the original petitioners and the main Writ Petition No.4799/2015 is as yet not even admitted.

3. It is under the above circumstances that the present civil application is filed by the applicant herein (LIC) with the prayers as under:

> "a) that pending the hearing and final disposal of the Petition, the Petitioner no.1 be directed to pay interim mesne profit / Damages at Rs.1,88,292 per month from 1st February, 1998 being the date of eviction till date i.e. @ Rs.78 per sq.ft. As per Valuers report filed with the Ld. Estate Officer with suitable raise every year from 1999 as per ready reckoner together with interest @ 9% or such rate as this Hon'ble Court may deem it fit and proper subject to outcome of calculation of final mense profit / damages in Mis Appeal no. 20 of 2016 pending before the Hon'ble City Civil Court Mumbai.
>
> b) That pending the hearing and final disposal of the Petition, this Hon'ble court issue appropriate directions against the Petitioners restraining them, their servants and agents from inducting any party in the said Premises and/or from creating third party rights in the said Premises.
>
> c) For Interim and Ad-Interim reliefs in terms prayer (a) and (b) above.
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> d) In the alternative to prayer clause (a) and (b) above this Hon'ble Court be pleased to fix an early date for hearing the Petition.
>
> e) For such further and other reliefs as the nature and circumstances require.
>
> f) For Costs."

It is stated in the application that the original petitioner i.e. Maharashtra Mineral Corporation Limited is occupying the premises of the applicant in South Mumbai, on the 5th floor of Industrial Assurance Building, opposite Churchgate Station, Mumbai. The applicant filed eviction application dated 25th May 1999 under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for eviction of the original petitioner and recovery of arrears of rent and damages. After hearing the parties, learned Estate Officer passed an order dated 25th February 2005 for eviction of the premises under section 5(1) and for recovery of rent with interest under section 7(1)(2-A) being the sum of Rs.8,10,399/- with simple interest at the rate of 10% per annum with effect from 1st March 2005 till the final payment and for recovery of damages with interest amounting to Rs.3,22,85,614/- with interest at the rate of 10% per annum; and further damages at the rate of Rs.2,79,630/- per month from 1st March 2005. The appeal preferred by the original petitioners against the aforesaid orders has been dismissed by order dated 17th March 2015 as noted earlier. Thus, in short, now the order dated 25th February 2005 passed by the Estate Officer is due for execution and implementation. The opponent herein has filed the main petition against the order of eviction dated 17th March 2015.

4. It appears from the orders dated 15th May 2015; 10th June 2015; and 17th June 2015 passed in the main petition that the main petition was mentioned for urgent orders on 15th May 2015 and a statement of learned counsel for the present applicant was recorded therein mentioning that the applicant did not intend to take any immediate action to enforce the order of eviction. Accordingly, the applicant was not to take any further steps till 12th June 2015. Such concession was expressly made entirely without prejudice to the rights and contentions of the applicant (LIC) and in view of the ensuing Vacation. However, on the subsequent date i.e. 10th June 2015 the matter was not on board and the Court recorded that the previous order dated 15th May 2015 was restraining the applicant Corporation from taking any coercive action pursuant to the order of eviction. It was on that basis observed: "Since the stay is to come to an end on 12-6-2015, the Petition has been moved for continuation of said stay and the Petition to be fixed for admission on a convenient date. The petition is accordingly placed for admission on 17-6-2015. The stay granted by order dated 15-5-2015 to continue until 17-6-2015". By the subsequent order dated 17th June 2015, the hearing of the petition was adjourned for two weeks with the observation: "The ad-interim relief which is in operation vide order dated 10.6.2015 would continue to operate".

5. The above record of pendency of the main petition would clearly show and it is conceded by the original petitioners that the main petition is as yet not heard even for admission and no interim or ad-interim relief was granted after hearing of the petition. As against that the contention of the applicant herein is that the original petitioners are not only not vacating the premises but continue to enjoy the premises at a prime location, without even paying the mesne profits and the amounts of liquidated damages. Mr.Anup Deshmukh, learned counsel appearing for the original petitioners submitted that the original petitioners were prepared to press for an early admission hearing of their main petition and in the meantime they have already, without prejudice to their rights and contentions, deposited around Rs.35 lakh with the applicant herein and other amount of Rs.16 lakh even before filing of the present civil application. He also submitted that the original petitioners are again, without prejudice to their rights and contentions, prepared to deposit with the applicant a sum of Rs.25 lakh on or before 8th September 2016. On the other hand, according to the calculations of the applicant herein, the applicant is entitled to the sum of Rs.1,88,292/- per month by way of damages and after the calculations made on that basis with interest already awarded to the applicant, the total amount recoverable from the original petitioners by 30th September 2015 was Rs.7,18,02,330/-. Even thereafter the damages at the rate of Rs.1,88,292/- per month are falling due with

interest on the unpaid amounts. Thus, it was clear and it could not be disputed that after filing of the main petition the original petitioners have neither vacated the premises nor paid the arrears, even according to their own calculations, and it is only after filing of the present civil application that the amounts not equivalent to even interest on the amount due is being paid or offered by the original petitioners. In such circumstances, it is difficult to resist the tentative conclusion and inference that the original petitioners are continuing to occupy the premises, which is ordered to be evicted, without even payment of arrears of mesne profits, damages and interest, only on account of pendency of the main petition.

6. Under the circumstances, the application is partly allowed with the direction that the original petitioner No.1 shall pay to the applicant herein mesne profits/ damages at the rate of Rs.1,88,292/- per month with effect from 1st September 2016 and further pay to the applicant the sum of Rs.3 crore towards arrears on or before 16th September 2016.

At the request of learned counsel appearing for both sides, the main petition being Writ Petition No.4799/2015 is ordered to be listed for admission hearing on 26th August 2016.

It is clarified that this order is made by way of interim relief to the applicant herein without prejudice to the rights and contentions of the parties and it shall be subject to such modifications, if any, as may be made by the Court upon hearing of the main petition.

7. The civil application stands disposed accordingly. There is no order as to costs. Even as this order is dictated in the open Court, learned counsel for the respondent has requested for stay of operation of this order for a period of three weeks. There being no justification for granting the request, it is rejected.

CHIEF JUSTICE