

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.727 OF 2015

Bharat Petroleum Corporation Limited ... Applicant
Vs.
Dr. Mugatlal Bhagwandas Shah and others ... Respondents

Mr. S. R. Page for Applicant.
Mr. S. C. Naidu a/w. Mr. Aniketh Poojari i/b. M/s. C. R. Naidu & Co. for
Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JULY 4, 2016

P.C. :

Heard Mr. Page, learned Counsel for the applicant and Mr. Naidu,
learned Counsel for the respondents No.1, 6 and 7 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant has challenged the judgment and decree dated 13.08.2009 passed by the learned Judge, presiding over Court Room No.32 of the Court of Small Causes at Mumbai (Bandra Branch) in Miscellaneous Notice No.185 of 2005 as also the judgment and decree dated 08.05.2015 passed by the appellate Bench of the Small Causes Court at Bandra, Mumbai in Miscellaneous Appeal No.53 of 2010. By these orders, the Courts below directed the applicant to pay mesne profits in respect of built up area of 758 sq.ft. @ Rs.50/- per sq.ft. per month from 01.08.2000 till handing over the suit premises and to pay mesne profits in respect of open land admeasuring 560 sq.ft. @ Rs.30/- per sq.ft. per month from 01.08.2000 till handing over possession to the plaintiffs together with interest @ 6% p.a. from the date of the decree on amount became due and payable.

3. In support of this Application, Mr. Page raised following

contentions:

a. By letter dated 12.09.2005, applicant expressed their desire to surrender the possession as also to withdraw the appeal subject to the respondents not pressing application for fixation of mesne profits. In fact, applicant fixed date of 06.10.2005 at 11.00 a.m. for handing over possession. However, respondents-plaintiffs did not accept possession. Applicant accordingly withdrew the appeal. In view thereof, respondents-plaintiffs were not justified in pressing the application for fixation of mesne profits.

b. Though the applicant was all along ready and willing to handover possession after the decision of the trial Court as also withdrawing the appeal, its dealer had instituted Suit being R.A.E.Suit No.621 of 2005. In view thereof, applicant is not in a position to deliver the possession to the plaintiffs. This fact was ignored by the Courts below while passing the impugned orders.

c. In any case, quantum fixed by the Courts below is exorbitant.

4. On the other hand, Mr. Naidu supported the impugned orders. He submitted that applicant was not in a position to handover vacant and peaceful possession of the suit premises to the respondents-plaintiffs and respondents were interested for handing over peaceful and vacant possession of the suit premises. As the dealer of the applicant has instituted Suit, applicant is not in a position to deliver vacant and peaceful possession. In view thereof, respondents-plaintiffs were justified in prosecuting the application for fixation of mesne profits. As far as the fixation of quantum is concerned, he submitted that after considering the evidence on record, the Courts below have fixed

quantum, and therefore, no case is made out for invocation of powers under Section 115 of C.P.C.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It appears that correspondence was exchanged between the parties for surrendering possession of the suit premises as also for withdrawing appeal by the applicant subject to the respondents not pressing claim for mesne profits. It also appears that by letter dated 27.09.2005, date of 06.10.2005 was fixed for handing over possession. Respondents were interested for handing over vacant and peaceful possession of the suit premises. The dealer of the applicant has instituted Suit namely R.A.E. Suit No.625 of 2005 and he has also obstructed execution of the decree. In these circumstances, respondents-plaintiffs were justified in prosecuting the proceedings for fixation of mesne profits as applicant was unable to handover vacant and peaceful possession of the suit premises to them. I, therefore, do not find any merit in the submission of Mr. Page that respondents-plaintiffs were not justified in prosecuting the proceedings for fixation of mesne profits.

6. As far as the fixation of quantum is concerned, the Courts below have considered the evidence of P.W.1 and P.W.2 as also report of the Architect at exhibit-F. In paragraph 29, the learned trial Judge observed that it will be just and proper to decide the mesne profits on the basis of instance No.7 in report at exhibit-F. In paragraph 37, after discussing the instances, the learned trial Judge held that Rs.50/- per sq.ft. per month will be just and proper rate for mesne profits in respect of built up area of 758 sq.ft. and that Rs.30/- per sq.ft. per month in respect of open land admeasuring 560 sq.ft.

7. As far as the appellate Court is concerned, from paragraph 17 onwards, the appellate Court has considered the valuation report as also evidence on record and ultimately, in paragraphs 22 and 23 observed that the fixation of mesne profits @ Rs.50/- per sq.ft. per month and Rs.30/- per sq.ft. per month in respect of built up and open land was just and reasonable. Thus, the findings recorded by the Courts below are based on the evidence on record. Applicant was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to the evidence on record. Applicant was also not in a position to demonstrate that reasonable or prudent person would have reached the conclusions arrived at by the Courts below. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

8. At this stage, Mr. Page orally applies for stay of this order for a period of 8 weeks from today. He, however, is not in a position to make submission as to within what time, applicant will deposit the amount in this Court as per the impugned orders. As the applicant is not in a position to deposit the amount as per the impugned orders, oral application is rejected.

(R. G. KETKAR, J.)

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