

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition No.9145 OF 2015
WITH
Civil Application No.2992 of 2015
In
Writ Petition No.9145 OF 2015

Jayant Suryakant Vedak

...Petitioner

Versus

M/s. P. M. Shah And Co. and Ors.

...Respondents

....

Mr.Abhishek P. Deshmukh, Advocate for the Petitioner.

Mr. Satyam N. Vaishnav a/w. Ms. Nupur J. Mukherjee, Advocate
for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 09th June, 2016

P.C.

1. Heard Mr.Deshmukh, learned Counsel for the petitioner and Mr.Vaishnav, 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 6.8.2015 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibit-7 in (A-1) Appeal No.339/2014 arising from the judgment and decree dated

2.5.2014 in R.A.E. Suit No.631/1081 of 2002 passed by learned trial Court, presiding over Court room No.23, Small Causes Court, Mumbai. By that order, the Appellate Court allowed the application filed by the petitioner, hereinafter referred to as 'defendant, and granted stay to the execution of the decree till further orders subject to the petitioner depositing sum of Rs.25,000/- per month in the Court on or before 5th day of each month as compensation for the use and occupation of an area admeasuring 117.79 sq. mtrs. (equivalent to 1267 sq. ft.) situate on the 1st floor at Jagannath Shankerseth Road, Chira Bazar, Mumbai – 400 002 (for short, 'suit premises').

3. Mr. Deshmukh submitted that the petitioner has filed additional affidavit dated 14.12.2015 enclosing therewith report dated 9.12.2015 of the Architect. He submitted that said report was obtained by the petitioner after the impugned order was passed. Mr. Deshmukh states that the petitioner is present in the Court. Upon taking instructions from him, he seeks permission to withdraw the petition with liberty to apply for modification of the impugned order on the basis of the report dated 9.12.2015.

4. Mr. Deshmukh assures that within six weeks from today, the petitioner will deposit the arrears of compensation upto 30.6.2016 in the trial Court and will not seek further time for depositing the amount. After depositing the arrears of compensation as on 30.6.2016, he will take out an application for modification of the impugned order and will serve copy in advance on the other side. Till such time the impugned order is modified, the petitioner will go on depositing the compensation as per the impugned order.

5. Mr. Vaishnav submits that in case such a liberty is granted, all contentions of respondent No.1, may be kept open.

6. In view thereof, Petition is disposed of as not pressed as under :

(i) The petitioner will deposit the arrears of compensation in the trial Court within six weeks from today under intimation in writing to respondent No.1 and will not seek further extension of time.

(ii) After depositing the arrears as on 30.6.2016 within six weeks from today, the petitioner will take out an

application for modification of impugned order and serve copy in advance on the other side. Till such time the impugned order is modified, the petitioner will go on depositing the amount of compensation at the rate of Rs.25,000/- per month.

- (iii) The amount of Rs.4,50,000/- deposited by the petitioner in this Court shall be transmitted forthwith to the Small Causes Court and the same shall be invested subject to respondent No.1 applying for appropriate orders.
- (iv) All contentions of the parties on merits are expressly kept open. Order accordingly.
- (v) In view of disposal of the Writ Petition, Civil Application No.2992/2015 does not survive and the same is disposed of.

(R. G. KETKAR, J.)