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

WRIT PETITION NO.8896 OF 2015

M/s. Haribhai B. Desai & Ors. .. Petitioners
Vs
M/s. Air India International & Ors. .. Respondents

Mr. P. S. Dani senior Advocate a/w Ms. Shoma Maitra i/b. Wadia Ghandy & Co. for the Petitioners.
Mr. Kunal Chheda i/b. M. V. Kini & Co. for the Respondent No.2.
Respondent No. 3 Mr. Rengaswamy Kanakaraju present in person in Court.
Mr. V. M. Bharadwaj for Respondent No. 6.
Mr. M. A. Shukla for the Respondent No. 8.
Respondent No. 4 to 9 present in court.
Kailash Doiphode, the Respondent No.4 on behalf of Respondent No. 10 present in court.
Mr. Vijay W. Shirsat Respondent No. 5 present.
Mr. Ashwani Sharma Respondent No. 6 present.
Mrs. V. J. Shaikh Respondent No. 9 present.
Mr. N. C. Rathod Respondent No. 8 present.
Mr. Sandeep Admane Respondent No. 9.

CORAM : N.M.Jamdar, J.
Tuesday, 29 November 2016.

Oral Order :

. Heard the learned counsel for the parties. At the request of the learned counsel for the parties and the party in person, the

petition is taken up for final disposal in view of the narrow controversy involved.

2. The Petitioner-landlord has challenged the order passed by the Small Causes Court, Bandra, dated 22 July 2015 in Obstructionist Notice No. 17 of 2013 and in Execution Application No. 10 of 2013 in T. E.& R Suit No. 94/106 of 2001. The Respondents are occupying certain flats in the building named Shanti Kunj Building, at Plot No. 514 of Scheme No. 7 Khar (West), Mumbai-400 052.

3. It is the case of the Petitioner-landlord that the premises were let out to the Respondent Air India International and the Respondent No. 3 to 10 were residing there as employees of Air India. The eviction proceedings were instituted on 31 July 2001 and decree was passed on 11 May 2012. Air India International made an application for joining the Respondent Nos. 3 to 10 as party Respondents in the suit, which application was rejected holding that these Respondents do not having right. Air India challenged the judgment and decree by an Appeal No. 14 of 2012, which appeal was disposed of. The Petitioner thereafter filed Execution Application No. 10 of 2013 on 1 December 2012. An order was passed by the learned Small Causes Court, granting stay to the execution of the decree on the condition of deposit of Rs.3,00,000/- per month. Air

India International did not comply with the terms and conditions. Thereafter, the Small Causes Court on 29 January 2013 issued notice to Air India International. Petitioner took out an application for issuance of warrant of possession. The Respondent Nos. 3, 6 and 8 filed an application Marji Application No. 164 of 2013 in Execution Application praying for dismissal of execution application. The Respondent Nos. 3 to 9 obstructed the execution of the decree and therefore petitioner filed Obstructionist Application No. 17 of 2013. RAD Suit No. 546 of 2013, RAD Suit No. 547 of 2013 and RAD Suit No. 548 of 2013 were also filed by the Respondent Nos. 3 to 9 for declaration as being tenant of the premises. The petitioner filed an application for payment of interim mesne profit at the market rate of Rs.109/- per sq. ft. per month, pending hearing and final disposal of obstructionist proceedings. This application has been rejected by the impugned order.

4. The contention of the learned senior Advocate for the Petitioner is that in view of the decision of the Apex Court in the case of *Marshall Sons & Co. (I) Ltd v. Sahi Oretrans (P) Ltd and Anr. (1999) 2 Supreme Court Cases 325,* in the facts of the present case, while obstructionist proceeding is pending compensation be directed to be deposited. It is submitted that Respondent Nos. 3 to 10 have demonstrated no right whatsoever as regard the claim of tenancy. It is submitted that since the Respondent Nos. 3 to 10 are occupying premises in a prime area in the Mumbai City, compensation to the

tune of Rs.60,000/- to Rs.70,000/- ought to be directed to be deposited. On the other hand, grievance is made by the Respondent Nos. 3 to 10 that the building is not been maintained and it is being maintained by the Respondents themselves. It is also contended that there is no decree for eviction against them and therefore, decision of the Apex Court in *Marshall Sons & Co.* is not applicable.

5. After hearing the arguments, it was put to the Respondent Nos. 3 to 10 whether, since they are currently paying a paltry rent of Rs.228/- per month, where they would voluntarily increase the amount and deposit the compensation in the Court on their own accord. The petition was kept back for them to consider. After some time the matter was mentioned and the Advocates for the Respondents and the Respondents in person made a statement that they will deposit Rs.3000/- per month. They stated that they are also paying plus maintenance charges and Rs.1667/- per flat per month is being deducted by the Respondent-Air India International. It is also stated by them that since building is maintained by themselves, costs of approximately Rs.2000/- per head is being incurred. The Respondent Nos. 3 to 9 who were present in the Court, tendered a statement to that effect under their signature. The learned senior counsel for the Petitioner has also not taken a stand that the amount sought for must be deposited but has stated some reasonable compensation should be directed to be deposited. The Apex Court in the case of *Marshall Sons & Co.* has indicated that the Court has a

power to pass directions to deposit reasonable compensation even in the obstructionist proceeding and it is not necessary that there needs to be a proceeding for eviction. In the present case, there is a decree in favour of the Respondent-landlord against the Respondent – Air India International, which is put to execution. It is the contention of the Respondent that they are independent tenants as well as that the decree earlier obtained is by way of fraud and collusion.

6. The Respondents are occupying the flats for a long period of time. Some part of the building appears to have been maintained by them. It is also stated that approximately an amount of Rs.1667/- per flat per month is being deducted from his salary. The object of grant of compensation is that the occupant should not live in the premises on mere pittance but must be put to some conditions. For that purpose all the surrounding facts and circumstances will have to be considered. Deference also will have to be given to the fact that the Respondents, even though there is no decree of eviction against them, have voluntarily agreed to deposit a higher amount. Therefore, considering the stand taken by the Respondent and the facts and circumstances, I am of the opinion that the interest of justice will be met if the Respondent Nos. 3 to 9 are directed to deposit an amount of Rs.5000/- each per month in the Small Causes Court till the disposal of the Obstructionist Proceedings. As far as the Respondent No.10 is concerned, the Respondent No. 4 has volunteered that he will represent Respondent No. 10. Furthermore, the order which is

passed in respect of other Respondents, on the ground of parity, since Respondent No. 10 is identically situated, will also apply to him. The amount shall be deposited from the date 29 October 2013 on which the application is filed by the Petitioner for grant of compensation. In case of arrears, it will be open to the Respondent Nos. 3 to 10 to approach the Small Causes Court for grant of suitable installments. The amount so deposited by the Respondent Nos. 3 to 10 will be subject to final outcome of the Obstructionist Proceeding.

7. Considering the facts and circumstances wherein decree is already passed operates against M/s. Air India International and what is pending are obstructionist proceedings and that Respondent Nos. 3 to 10 have been directed to deposit monthly compensation, the learned Small Causes Judge will try to make an endeavor to dispose of the Obstructionist Notice No. 17 of 2013 and the suits filed by the Respondent RAD Suit No. 546 of 2013, RAD Suit No. 547 of 2013 and RAD Suit No. 548 of 2013 within a period of one year from today, subject to earlier time bound commitments.

8. The Writ Petition is disposed of in above terms.

9. All the contentions of the parties on merits of their case are kept open.

(N.M.Jamdar, J.)