

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.630 OF 2016
IN
CIVIL REVISION APPLICATION NO.826 OF 2014

M/s. FAB Fashions,
A proprietary firm of Smt. Smita Modi .. Applicant
Versus
M/s. Radium Garments Pvt. Ltd. .. Respondents

WITH

CIVIL APPLICATION NO.631 OF 2016
IN
CIVIL REVISION APPLICATION NO.827 OF 2014

M/s. FAB Fashions,
A proprietary firm of Smt. Smita Modi .. Applicant
Versus
M/s. Radium Garments Pvt. Ltd. .. Respondents

Ms. Smita Modi – applicant – present in person
Mr. G.S.Godbole, Senior Advocate with mr. Dhrupad Patil i/b. Parag Tilak
for respondents.

CORAM : R.G.KETKAR, J.
DATE : 19th September 2016.

P.C.

1] Heard Ms. Modi applicant appearing in person and
Mr.G.S.Godbole, learned Senior Counsel appearing for respondents in
both the applications at length. By these applications, the applicant has

prayed for restoration of possession of Gala Nos. 208 and 209 of Prakash Industrial Premises Coop. Societies (Bharat Industrial Estate, T.J.Road, Sewree, Mumbai 400 016 (hereinafter referred to as suit premises). Civil Revision Application Nos. 826 and 827 of 2014 were admitted by this Court after hearing both sides on 7th September 2015 by issuing Rule. Para 2 of that order reads thus:-

“2. There shall be ad-interim relief in terms of prayer clause (d) subject to the following conditions:-

(a) that the applicant shall file a usual undertaking in this Court within a period of two weeks from today along with advance copy of the same to the learned Counsel for respondent;

(b) That the applicant shall deposit in this Court compensation at the rate of Rs.10,000/- (Rupees ten thousand only) per month in respect of each of the suit premises on or before 5th day of each succeeding months;

(c) The aforesaid deposit shall be with effect from 1st December 2013. This is because the Appeal Court's eviction decree is dated 12th November 2013. The arrears to be deposited within a period of three months from today.”

2] By clause (b) of para 2 the applicant is directed to deposit in this Court compensation at 10,000/- per month in respect of each of the galas on or before 5th day of each succeeding month. By clause (c) it was made clear that the deposit shall be effective from 1st December 2013 as the eviction decree was passed by the appellate court on 12th November 2013.

3] Para 4 of that order gives liberty to the respondents to set out particulars with regard to the society maintainance charge and other outgoings in respect of the suit premises. These aspects are to be considered at the stage of confirmation of ad-interim order. It appears that the applicant was heard on 26th April 2016. On that date the applicant filed an application for extension of time for depositing arrears on or before 10th June 2016. By an order dated 26th April 2016, liberty was granted to the applicant to clear the arrears as per the order dated 7th September 2015 on or before 10th June 2016. It was made clear that the failing to clear arrears will result in vacation of interim protection granted by this Court without reference to the court.

4] It appears that matters were not listed on 10th June 2016. In view thereof, the applicant applied for circulation and accordingly circulation was granted for 17th June 2016. On 10th June 2016 the applicant filed application for extension of one month to deposit balance amount of Rs.1,20,000/-. Though the matter was listed on 17th June 2016 due to paucity of time it was adjourned to 24th June 2016. Again on 24th June 2016 due to paucity it was adjourned to 8th July 2016. On 8th July again the matters were adjourned to 22nd July 2016. It appears that in the mean time, on 12th July 2016 the applicant obtained circulation and it was

accordingly granted on 29th July 2016. The matters were heard on 26th August 2016. When the application for transfer of matter from this Court, made by the applicant to the Hon'ble Chief Justice was brought to the notice of this Court. The matter was adjourned for two weeks so as to enable the applicant to obtain appropriate orders from the Chief Justice. It may be mentioned here that on 26th August 2016, Mr. Dhruvad Patil orally indicated that respondents are in the process of taking possession. As the applicant had made allegations against this Court in the application dated 13th July 2016, I adjourned the hearing of the matters by two weeks so as to enable the applicant to obtain appropriate orders from the Hon'ble Chief Justice. In view of the allegations, I deemed it appropriate not to pass any orders on merits of the case.

5] In pursuance of the application made by the applicant, submission was put up by the Registry before the Hon'ble Chief Justice. By an administrative order dated 29th August 2016 the Hon'ble Chief Justice directed hearing of these matters as per the roster. Accordingly, matters were listed before me on 30th August 2016. On 30th August 2016, statement was made by the applicant that without prejudice to the rights and contentions of parties, she is willing to deposit Rs.60,000/- each by pay orders in this Court within two weeks. The statement was accordingly recorded and the applicant was permitted to deposit

Rs.1,20,000/- for both civil revision applications. Certain interim orders were also passed on 30th August 2016. Office remark shows that the applicant has deposited Rs.1,20,000/- in this court on 1st September 2016. It is in these circumstances, the civil applications are heard today for considering the prayer for restoration of suit premises to the applicant.

6] Ms. Modi submitted that on 11th July 2016, she came with pay orders in the sum of Rs.1,20,000/-. However, the matters were not heard. The matters were heard on 26th August 2016 and the same were adjourned for two weeks to enable her to obtain appropriate orders from the Hon'ble Chief Justice. As the pay orders were ready on 11th July 2016, this Court should have permitted her to deposit the same so as to enable her to comply with the order dated 26th April 2016. She submitted that as the matters did not reach after 11th July 2016, she should not suffer. At the same time, she also should not suffer because of mistake committed by this court. For all these reasons, she submitted that the application deserves to be allowed.

7] On the other hand, Mr. Godbole submitted that by order dated 26th April 2016, this Court by way of indulgence and on humanitarian grounds extended time upto 10th June 2016 for depositing arrears as per order dated 7th September 2015. While extending time, this court also made it

clear that the interim protection shall be vacated in case the applicant does not comply with that order. Admittedly, the applicant did not deposit the amount of Rs.1,20,000/- on 10th June 2016. Interim order, therefore, stood automatically vacated after 10th June 2016. He has taken me through the affidavit in reply filed by the one Mohammed Salim Khan, opposing these applications and in particular (i) order dated 7th September 2015; (ii) affidavit dated 12th December 2015 made on behalf of the respondents for considering confirmation of ad-interim order; (iii) the application dated 13th April 2016 made by the applicant seeking extension of time upto 10th June 2016; (iv) order dated 26th April 2016; (v) the application dated 10th June 2016 made by the applicant for extension of time by one month for depositing Rs.1.20,000.

8] Mr. Godbole further submitted that the applicant has consistently committed defaults in depositing the amount of compensation. In fact precisely for this reason, the defence was struck out by the Small Causes Court. Even in the present case, as the applicant did not deposit arrears as on June 2016 till 10th June 2016, ad-interim orders stood automatically vacated. He invited my attention to para 24 of the application wherein the applicant herself has averred that the matter came up for hearing on 8th July 2016 when this Court clarified that the stay will not be continued unless she brings pay order. In other words, according to him, the

applicant was fully aware of the compliance to be made of the order dated 7th September 2015 failing which the stay would not have been continued. Despite that, the applicant did not comply with the order. Mr. Godbole further submitted that as the stay was vacated by following due process of law, the respondents have taken possession of the suit premises. For all these reasons, he submitted that no case is made out for restoration of suit premises with the applicant.

9] I have considered rival submissions advanced by the learned Counsel for parties. As noted in the order dated 7th September 2015, this Court admitted the civil revision application. I have already extracted the para 2 of the said order of 7th September 2015.

10] By clause (b) of para 2, this court directed the applicant to deposit compensation at Rs.10,000/- per gala per month in this court on or before 5th day of each succeeding month. Deposit was to be made effective from 1st December 2013. As far as payment of maintainance charges and other outgoings in respect of suit premises are concerned, these are to be considered at the stage of confirmation of ad-interim order.

11] The matters were, thereafter, heard on 26th April 2016. On that date, applicant made an application seeking one month's extension for

depositing arrears as on June 2016. On the same date this Court extended time upto 10th June 2016 for depositing arrears as per the orders dated 7th September 2015. On 10th June 2016, applicant again made an application for extension of one month's time for complying with the order dated 7th September 2015. In other words, on 10th June 2016 the applicant did not comply with the orders dated 7th September 2015 by depositing entire arrears as on June 2016.

12] During the course of hearing of this applicant Mr. Godbole fairly stated that the respondents are ready and willing to bring the keys of the suit premises for depositing in this court and the officer of this court may hand over keys to the applicant tomorrow. Mr. Godbole makes this statement upon taking instructions from Mr. Mohd. Salim Khan, Managing Director of the respondents. On his instructions, Mr. Godbole further submits that the respondents will bring the keys of the suit premises for depositing the same in this Court provided applicant withdraws the allegations made against the Advocate for respondents so also she does not pursue the non cognisable complaint filed by her with M.R.A. Marg Police Station on 13th July 2016.

13] The applicant states that she withdraws the allegations made against the Advocate for respondents and also assures that she will not

pursue the N.C. Complaint filed by her. Statements made by her are recorded. The allegations against the Advocate for the respondent stand withdrawn.

14] In view thereof, by consent the civil applications are allowed in terms of prayer clause (a). List the matter for reporting compliance and for confirmation of ad-interim relief on 30th September 2016 at 3.00 p.m.

(R.G.KETKAR, J)