

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12293 OF 2015

Mr.Nandlal Budaram Dang,
since deceased through his legal heirs
Rajeev Nandlal Dang and Anr. .. Petitioners

vs.

Mr.Amolak Singh Kartar Singh Hora & Ors. .. Respondents

Mr.Himanshi Kode for the petitioner

Mrs.Aparna A. Dhavale for the respondent nos.1 to 4

CORAM : K. K. TATED, J.
DATE : APRIL 5, 2016

P.C.:

- 1 Heard the learned counsel for the parties.
- 2 By consent of both the parties, matter is taken up for final hearing at the stage of admission itself.
- 3 By this petition, under Article 227 of the Constitution of India, petitioner defendant tenant challenges the order dated 18.8.2015 passed by the learned District Judge 23, Pune below Exhibit 4 in Civil Application No.469 of 2014 granting conditional stay to the judgment and decree passed by Trial Court on 8.7.2014 directing defendant to

deposit sum of Rs.30,000/- by way of interim compensation till the hearing and final disposal of the Appeal

4 For the sake of convenience, the nomenclature of the parties as is stated in the suit will be referred to hereinafter as the petitioners org.defendants and respondents org. plaintiffs.

5 The plaintiff filed S.C.Suit No.364 of 2011 in the court of Small Causes at Pune for vacant and peaceful possession of the suit premises i.e. flat no.13-A, Cycle Merchants Cooperative Housing Society Ltd., Quarter Gate, Pune 411 011 on the ground that plaintiff requires the suit premises for their reasonable and bonafide requirement. The said suit was decreed by the Trial Court by the Judgment and Decree dated 8.7.2014 directing defendants to hand over vacant and peaceful possession of the suit premises to the plaintiffs. The court directed to hold separate enquiry under Order 20 Rule 12(1)(d) of the Civil Procedure Code, 1908 for deciding the mesne profit.

6 Being aggrieved by the said the Judgment and Decree, the defendants preferred Civil Appeal No.469 of 2014 in the court of District Judge, Pune at Pune. That appeal was admitted by the Appellate Court. In Appeals the defendants preferred Application under Order 41 Rule 5 of the Civil Procedure Code, 1908 being Exhibit 4 for stay of the operation and implementation of the the Judgment and Decree dated 8.7.2014 passed by Trial Court directing defendant to hand over vacant and peaceful possession of the suit premises. At the time of allowing the said application below Exhibit 4 the appellate

court directed defendant to deposit Rs.30,000/- per month as interim compensation of the suit premises from the date of application till the date of decision of the Appeal. Being aggrieved by the said order the defendants preferred the present Writ Petition.

7 The learned counsel for the defendants submits that the order passed by the appellate court dated 18.8.2015 directing defendant to deposit interim compensation @ Rs.30,000 is against justice, equity and good conscious and same is liable to be set aside.

8 The learned counsel for the petitioners submits that the building in which the suit premises is situated is old building. The same was constructed in the year 1969. He submits that before passing the decree, the defendants used to pay Rs.850/- by way of rent to the plaintiffs. He submits that at the time of fixing the compensation in respect of the suit flat, the appellate court ought to have considered that the building is very old i.e. of the year 1964 (51 years old) and therefore, while calculating the compensation amount 60% depreciation will have to be considered which has not been done by the appellate court. He submits that the appellate court mainly relied on the leave and licence agreement dated 30.3.2011 in respect of flat no.10B on the ground floor of the said Society in which the Suit premises is situated. He submits that the appellate court failed to consider the fact that though by leave and licence agreement dated 30.3.2011 the land lord gave oral permission to the occupant to use the said flat for commercial purpose.

9 The learned counsel for the petitioners submits that as on today the occupant of the said flat no10B is using the same for Poly Clinic. In support of this contention, the learned counsel for the petitioner shows the photographs across the bar. He submits that considering the fact that the defendant use to pay rent @ Rs.810 per month, the condition of the flat and the flat involved in the leave and licence agreement dated 30.3.2011 which is in use for commercial purpose, this Hon'ble Court be pleased to set aside the condition imposed by the appellate court in impugned order dated 18.8.2015 directing defendant to pay Rs.30,000/- by way of interim compensation and fix reasonable compensation payable by the defendants. He submits that as per the calculation of the defendants, the compensation in any case should not be more than Rs.12,500/- per month. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the present Writ Petition setting aside the condition of payment of Rs.30,000/- per month by way of interim compensation and fix the reasonable compensation.

10 On the other hand, the learned counsel for the respondent plaintiffs vehemently opposed the present Writ Petition. She submits that the appellate court has fixed compensation in respect of the suit premises @ Rs.30,000/- per month on the basis of leave and licence agreement dated 30.3.2011 in respect of the flat no.10B on the ground floor situated in the same society where the suit flat is situated. She submits that though the defendant orally argued before this court that the landlord in the said leave and licence agreement dated 30.3.2011 permitted the occupant to use the said flat for commercial purpose, not a single iota of evidence is brought on record by them in support of

case. She further submits that even the appellate court at the time of fixing interim compensation @ Rs.30,000/- per month considered the ready reckoner rates. She submits that considering the ready reckoner rates and the leave and licence agreement dated 30.3.2011, the appellate court rightly decided that the defendants have to pay Rs.30,000/- per month by way of interim compensation. She submits that there is no substance in the present Writ Petition and same be dismissed with costs.

11 I have heard both the sides. It is to be noted that in the present proceeding, Trial Court by the Judgment and Decree dated 8.7.2014 decreed the plaintiffs suit on the ground that they require suit premises for their bonafide requirement. The Court below fixed the interim compensation payable by the defendants on the basis of leave and licence agreement dated 30.3.2011 in respect of flat no.10B in a Society where the suit premises is situated. The leave and licence agreement shows that the occupant agreed to pay sum of Rs.32,000/- per month but same is in commercial use. Even the Court below considered the ready reckoner for the year 2015 and decided the interim compensation.

12 The Apex Court in the matter of *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt.Ltd., 2005 (1) SCC 705* and *The State of Maharashtra and Anr. vs. Super Max International Pvt.Ltd. and Ors., 2009(9) SCC 772* held that at the time of fixing interim compensation same be fixed on the basis of rent paid by the tenant, ready reckoner and market value of the suit premises.

13 Considering the above mentioned facts and the law declared by the Apex Court in the matters of *Atma Ram Properties (Private) Limited vs. Federal Motors Private Limited 2004* (Supra) and *State of Maharashtra vs. M/s.Super Max International Private Limited*, (Supra), I am of the opinion that in the interest of Justice, defendant instead of depositing Rs.30,000/- per month be directed to deposit Rs.22,500/- per month by way of interim compensation. It is to be noted that the Trial Court passed decree on 8.7.2014 and thereafter the defendant filed the application below Exhibit 4 on 12.8.2014 and the stay was granted by the appellate court on 18.8.2015. Considering these facts, the defendants have to deposit interim compensation @ Rs.22,500/- from the date of the Judgment and Decree passed by Trial Court. Hence, following order is passed:

- a) Writ Petition is partly allowed.
- b) The order dated 18.8.2015 passed by learned District Judge – 23 Pune below Exhibit 4 is partly set aside to the extent of fixing interim compensation @ Rs.30,000/- per month.
- c) The defendants to pay sum of Rs.22,500/- by way of interim compensation from the month of August 2014 till the hearing and final disposal of the Civil Appeal No.469 of 2014.
- d) Defendants to deposit monthly compensation in Trial Court from May 2016 on or before 10th of each month.

e) Defendants to clear arrears of compensation from the month of August 2014 till April 2016 within three months from today.

f) Apart from compensation, defendants to deposit monthly rent of Rs.850/- per month in Trial Court on or before 10th of each month and arrears if any, to be cleared within three months from today.

g) Trial Court is directed to invest entire amount of compensation in fixed deposit of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the Civil Appeal No.469 of 2014.

h) Plaintiffs are entitled to withdraw the amount of rent without furnishing any security.

i) Defendants are restrained by an order of injunction from creating any third party right, title and interest in respect of the suit property i.e. flat no.13-A, Cycle Merchants Cooperative Housing Society Ltd., Quarter Gate, Pune 411 01.

j) Defendants are restrained from using the flat for any other purpose except residential.

k) If there is any default in payment of compensation and or rent, interim protection granted in favour of defendants shall stand vacated without referring back to the court and in that case, plaintiffs shall be entitled to execute the decree according to law.

l) Writ Petition stands disposed of accordingly.

JUDGE