

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10518 OF 2015

SHRI. KISAN LAXMAN GHUMARE
AND ORS

...Petitioners

Versus

SHRIKISHNA GRUHA RACHANA SANSTHA
MARYADIT

...Respondent

....

Mr. Shailendra S. Kanetkar, Advocate for the Petitioners.
Mr. Jaydeep Deo, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 29th MARCH, 2016

P.C.

1. Heard Mr. Shailendra Kanetkar, learned Counsel for the petitioners and Mr. Jaydeep Deo, learned Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, 1950 the petitioners have challenged the judgment and order dated 30.4.2015 passed by the learned District Judge-4, Pune below Exhibit-5 and Civil Appeal No.460/2014. By that order, the learned District Judge stayed the execution and operation of the judgment and decree dated 18.7.2014 passed by

the learned 4th Joint Civil Judge, Junior Division, Pune in R.C.S. No.6045/2000 subject to the petitioners depositing an amount of Rs.10,000/- per month on account of damages/compensation from the date of trial courts decree till disposal of the appeal, for use and occupation of the piece of land admeasuring 3500 sq. ft. out of survey No.47, Hissa No.3/2, situate at village Kharadi, Taluka-Haveli, District-Pune. It was clarified that said payment shall be condition precedent for stay of execution of the trial Court's decree. Learned District Judge directed the petitioners to deposit Rs.90,000/- for the period from 18.7.2014 to 18.4.2015 on or before 11.5.2015 and continue to deposit the amount of damages/compensation @ Rs.10,000/- per month on or before 20th day of every month till disposal of the appeal. The respondent is at liberty to recover the amount on furnishing security or bank guarantee in the like amount.

3. Mr. Kanetkar strenuously submitted that basically the suit instituted by the plaintiff in Civil Court itself is not maintainable. He submitted that the plaintiff had issued notice to quit and deliver vacant possession on the ground that defendant No.1 was employed as a watchman of the society. It,

therefore, becomes a service tenancy. The Civil Court has no jurisdiction to entertain and try the suit. He further submitted that the defendant has become deemed member and, therefore, also the Civil Court has no jurisdiction as the said issue can be gone into only by the Registrar under the Maharashtra Co-operative Societies Act, 1960. He submitted that as the issues raised by the defendant goes to the root of the matter, the learned District Judge was not justified in imposing conditions while granting stay.

4. On the other hand, Mr. Deo supported the impugned order. He submitted that the order passed by the learned District Judge is under Order 41 Rule 5 of CPC. He submitted that while granting stay the Appellate Court is justified in imposing condition. Since the impugned order is purely discretionary order, no case is made out for invocation of the powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

6. As noted earlier, the suit instituted by the plaintiff for recovery of possession is decreed by the trial Court. The learned trial Judge has directed the defendants to remove the structure constructed on the property owned by the plaintiff and vacate the suit plot and deliver vacant and peaceful possession to the plaintiff. Aggrieved by that decision, the defendants have preferred appeal. Pending that appeal, they took out application Exhibit-5 for stay of the execution of the trial Court's decree. The learned District Judge while granting stay has considered the location of the property as also the prevailing rates in the locality and observed that it is just, proper and desirable to direct the defendants to deposit an amount of Rs.10,000/- per month on account of damages/compensation for use and occupation of the suit plot. In my opinion, it cannot be said that the learned District Judge has exercised the discretion arbitrarily or capriciously. For the reasons recorded in paragraph-16 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed. As by instituting the suit, the plaintiffs have alleged that the defendants are encroachers, the learned District Judge

is requested to decide the appeal within six months from receipt of an authenticated copy of this order. All contentions of the parties are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)