

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3595 OF 2016

Ms Maithili Nair through her Constituted Attorney
Rashmikanth Shah ... Petitioner
Vs.
Vijaykumar Vasantrao Hate ... Respondent

WITH
WRIT PETITION NO.3469 OF 2016

Vijaykumar Vasantrao Hate ... Petitioner
Vs.
Ms Maithili Nair through her Constituted Attorney
Rashmikanth Shah ... Respondent

Ms Mansha Khemka a/w. Ms Bhagyashree Upadhyay i/b. Khemka & Associates for Petitioner in Writ Petition No.3595 of 2016 and for Respondent in Writ Petition No.3469 of 2016.

Mr. G. S. Godbole, Senior Advocate i/b. Mr. Kaustubh Thipsay for Petitioner in Writ Petition No.3469 of 2016 and for Respondent in Writ Petition No.3595 of 2016.

CORAM : R. G. KETKAR, J.
DATE : JULY 14, 2016

P.C. :

Heard Ms Khemka, learned Counsel for petitioner in Writ Petition No.3595 of 2016 and for respondent in Writ Petition No.3469 of 2016 and Mr. Godbole, Senior Advocate for Petitioner in Writ Petition No.3469 of 2016 and for Respondent in Writ Petition No.3595 of 2016 at length.

2. Both these Petitions are directed against the judgment and order dated 14.08.2015 passed by the Appellate Bench of the Small Causes Court at Bandra, Mumbai below exhibit-6 in Appeal No.5 of 2014 arising from R.A.E.&R. Suit No.451/1050 of 1996. By that order, the appellate Court allowed the application made by the original defendant

under Order 41, Rule 5 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and granted stay to the execution of the judgment and decree dated 16.01.2014 passed by the learned trial Judge in that Suit subject to the defendant paying or depositing in the Court, compensation at the rate of Rs.13,000/- per month from the date of the decree till August 2015 within one month and to go on regularly depositing the same on or before 15th day of each month. The appellate Court also permitted the plaintiff to withdraw an amount of Rs.316/- per month equivalent to rent of the suit premises.

3. Ms Khemka, in support of Writ Petition No.3595 of 2016, strenuously contended that in the year 1987, defendant had advanced loan of Rs.30,000/- to the plaintiff. She submitted that neither during the pendency of the Suit nor before the appellate Court, plaintiff disclosed the fact that defendant had advanced loan of Rs.30,000/-. It was also agreed between the parties that loan was to be repaid within 10 years i.e. in the year 1997 and upon failure to do so, defendant is to become owner of the suit premises. She further submitted that the interest on the loan amount of Rs.30,000/- will be approximately to the tune of Rs.2,40,000/- and the contractual rent between the parties is Rs.205/-. As the plaintiff has not repaid the loan amount, defendant has become the owner of the suit premises as per the agreement between the parties. She, therefore, submitted that the appellate Court was not justified in imposing condition of paying / depositing Rs.13,000/- per month while granting stay. She submitted that in the facts and circumstances of the present case, defendant is entitled to unconditional stay.

4. On the other hand, Mr. Godbole submitted that the suit premises is a flat admeasuring 750 sq.ft. plus garage. The suit premises is situate

on the first floor of Vasant Building situate on Gandhi Gram Road, Juhu, Mumbai 400 049. He submitted that the suit premises is located in a posh locality and therefore, plaintiff is entitled to compensation @ Rs.40,000/- to Rs.50,000/- per month. He invited my attention to paragraph 10 of the impugned order and submitted that plaintiff had produced print out taken out from the Internet showing licence fee of Rs.24,000/-. He, therefore, submitted that plaintiff is entitled to amount of Rs.40,000/- to Rs.50,000/-. He further submitted that plaintiff is not admitting that defendant had advanced Rs.30,000/- to the plaintiff.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the suit premises is a self-contained one BHK flat along with stilt parking. It measures about 750 sq.ft. and situate in a prime locality of Juhu in Mumbai. Ms Khemka submitted that plaintiff did not disclose advancing loan of Rs.30,000/- by defendant to him either in the trial Court or even before the appellate Court. As against this, plaintiff is disputing the said fact. It is, therefore, not possible to adjudicate this aspect in these Petitions and it will be open to the parties to agitate the said contention before the appellate Court.

6. While fixing the quantum, the appellate Court observed in paragraph 10 thus,

10. The respondent claimed compensation @ Rs.40,000/- to Rs.50,000/- per month. He relied upon the photocopy of electricity bill, print out taken out from internet showing the license fee of Rs.24,000/- which is in respect of transaction of leave and license agreement. However, no sufficient evidence brought on record at the instance of the respondent to substantiate the contention that market rate or license fee in the locality wherein the suit premises situates is about Rs.40,000/- to Rs.50,000/- per month. In view of the nature, situation and condition of the suit premises being a residential accommodation,

compensation of Rs.13,000/- per month is just and proper to meet the ends of justice. In view of aforesaid discussion, the appellant has made out case to grant stay to execution of impugned judgment and order dated 16/01/2014 on imposition of condition of payment of compensation of Rs.13,000/- per month. Appellant is liable to pay or deposit in the court monthly compensation of Rs.13,000/- since the date of decree till final disposal of the present appeal. Accordingly, we answer point No.1 in the affirmative.”

7. Perusal of paragraph 10 shows that appellate Court found that no evidence was brought on record by the plaintiff to substantiate the contention that the market rate or licence fee is Rs.40,000/- to Rs.50,000/- per month. Plaintiff had produced printout taken out from Internet showing the licence fee of Rs.24,000/-. Plaintiff did not produce any evidence to substantiate his plea. I do not find that the appellate Court committed any error in fixing monthly compensation @ Rs.13,000/-. Mr. Godbole submits that plaintiff will take out Review Application by producing evidence to substantiate his claim that plaintiff is entitled to market rate @ Rs.40,000/- to Rs.50,000/- per month. In view thereof, I do not find that any case is made out for interfering with the impugned order. Hence, Petitions fail and the same are dismissed reserving liberty to the plaintiff to take out application seeking review of the impugned order by producing material in support of their contention. If such material is produced, the appellate Court will decide the same, uninfluenced by the observations made in the impugned order and in this order. However, if no such material is produced, the appellate Court will bear in mind observations made in paragraph 10 extracted hereinabove and pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)