

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.275 OF 2016**

Photolink Creative (India) Pvt. Ltd. ... Petitioner
V/s.
Mrs. Ramadevi Tantia & Ors. ... Respondents.

...
Mr. Kunal Bhanage a/w. Ms. Rehmat Lokhandwala i/b. Mona Malvade for the petitioner.
Mr. C. G. Gavnekar for the respondents.

...
CORAM : R. G. KETKAR, J.

DATE : 08/09/2016.

P.C.:

1. Heard Mr. Bhanage learned counsel for the petitioners and Mr. C. G. Gavankar, learned counsel for the respondents.
2. By this writ petition, under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 23.10.2015 passed by the learned presiding Judge, Court Room no.23 of the Court of Small Causes at Mumbai, below Exh.18 in L.E. & C Suit No.179/222 of 2011. By that order, the learned trial court partly allowed the application made by the respondents / plaintiffs and directed the defendants to pay amount of Rs.2,70,600/- per month to plaintiffs No.1 to 4, related as trustees of Tantia Charitable Trust, as compensation for use and enjoyment of the suit premises, from 28.11.2011 till 31.10.2015, amounting to Rs.1,27,18,200/-, within two months from the date of order. The defendant is further directed to pay an amount of Rs.1,80,400/- per month as

compensation to plaintiffs No.5 to 8, related as the trustees of Girdharilal Shewnarain Tantia Trust, amounting to Rs.84,78,800/- within two months from the date of order. The defendant is further directed to go on paying Rs.2,70,600/- per month, on or before 10th day of each month regularly, to the plaintiffs No.1 to 4, related to Tantia Charitable Trust, as compensation until final decision of the suit. The defendant is further directed to pay an amount of Rs.1,80,400/- as compensation for the use and occupation of the suit premises to the plaintiffs No.5 to 8, related to Girdharilal Shewnarain Tantia Trust, on or before 10th day of each month regularly until final decision of the suit. The trial court further granted liberty to the plaintiffs to withdraw the amounts, so deposited by the defendant.

3. Mr. Gavnekar, learned counsel for the respondents raised objection on the ground of maintainability of this petition. He submits that in view of section 42(4) of the Presidency Small Cause Courts Act, 1882, the petitioner has equal efficacious alternate remedy by filing the revision application. He relied upon decision of this court in ***The Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd. Vs. Smt. Kusumben Kantilal Shah & Ors.*** 2003(4) ALL MR 304.

4. In view thereof, Mr. Bhanage seeks leave to withdraw the petition with liberty to file revision application before bench of two Judges of Small Causes Court at Mumbai. He submits that this petition was instituted on 19.12.2015, and the period spent in prosecuting this petition may be excluded. He submits that within four weeks from today, he will file revision application.

5. In view thereof, this petition is dismissed as not maintainable. Liberty is granted to the petitioner to file revision application within four weeks from today. If revision application is filed within four weeks from today, the time spent by the petitioners between filing this petition on 19.12.2015 till 08.09.2016 shall be excluded while considering the period of limitation for filing revision application.

6. Liberty is granted to the petitioner to apply for appropriate interim order pending revision application.

(R. G. KETKAR, J.)