

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.166/2016
IN
CIVIL REVISION APPLICATION NO.647/2009
WITH
CIVIL APPLICATION NO.168/2016
IN
CIVIL REVISION APPLICATION NO.646/2009

M/s. Parasram Parumal & Co. ... Applicant

Maharashtra State Cooperative
Marketing Federation Ltd. ... Petitioners

V/s.

M/s. Parasram Parumal & Co. ... Respondents

Ms. Rajkumari C. Nichani for the Applicant.
Mr. P. M. Palshikar for the Petitioners.

CORAM: K.K. TATED, J.
DATED : MARCH 15, 2016

PC. :

1. Heard the learned counsel for the parties. By consent of the parties, the civil application No.168/2016 taken on board for hearing.
2. Both these civil applications are made by the landlord for fixing early date of hearing of the Civil Revision Application and for fixing compensation in respect of the suit premises i.e. Godown Nos.14 and 15 situated at P. Demello Road, Mumbai – 400 009.

3. The learned counsel for the applicant submits that these two civil applications are made by them pursuant to the liberty granted by this court by order dated 02.07.2014 in civil application No.541/2013 and 540/2013.

4. The learned counsel for the applicant submits that the Small Causes Court decided mesne profits application No.115/2012 in TE & R Suit No.74/81 of 2003 and mesne profit application No.114/2011 in EER 74/81/2003 by order dated 24.10.2015 and has determined the mesne profit @ Rs.20,000/- pm. from the date of termination of tenancy till the date of execution of decree. The learned counsel for the applicant further submits that they preferred appeal No.481/2015 and 482/2015 challenging the judgment and decree passed by the Small Causes Court in mesne profit applications. She submits that both the appeals are pending for hearing and final disposal on its own merits.

5. The learned counsel for the applicant submits that the petitioner tenants are not using the suit premises. She submits that as per the market rate, the interim compensation ought to have been fixed @ Rs.61000/- pm. She submits that the matter is pending since 2000. She submits that they filed the suit in 2003 and since then the petitioner tenants are in possession of both the go-downs. She submits that considering the present market rate, the trial court ought to have decided the interim compensation @ Rs.61000/- pm. In support of her contention, the learned counsel for the applicant relied on para 5 of the civil application.

6. On the other hand, the learned counsel for the tenant vehemently opposed the civil applications. He submits that though this court granted liberty to the applicant landlord by order dated 02.07.2014 to file a fresh civil application, same is not maintainable in view of subsequent development. He submits that the trial court, on merits, decided the mesne profits applications filed by the applicant landlord. Being aggrieved by the said order dated 24.10.2015 passed by the Small Causes Court in mesne profit applications, the applicant landlord already preferred appeals and those are pending. Hence, there is no question of entertaining the present civil applications for the same cause of action for which the appeals are pending before the Appellate Bench of the Small Causes Court.

7. Heard both sides at length. Though this court, by order dated 02.07.2014, granted liberty to the applicant landlord to make an appropriate application for interim compensation, in view of subsequent developments i.e. mesne profits applications made by the applicant landlord have already been decided and the appeals against those orders are pending, I do not find any reason to entertain the present civil applications for prayer clause (b). Hence, prayer clause (b) stands rejected.

8. Considering the submissions made by the learned counsel for the applicant, I am satisfied that the applicant has made out a case for expeditious hearing of the Civil Revision Applications.

9. Hence, hearing of the Civil Revision Applications is expedited.

10. Prayer for interim compensation in respect of the suit premises is rejected.
11. Civil application stands disposed off accordingly.

(K.K. TATED, J.)