

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6678 OF 2017

M/s. Baldava and Company and ors. .. Petitioners.

vs.

Shri. Irrappa C. Patil (since deceased
through His LRs and ors.) .. Respondents

Mr. Sarthak S. Diwan for the Petitioners.

Mr. Ashok B. Tajane for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 28 AUGUST 2017.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The petition challenges the order dated 7th March 2017 made by the Executing Court in Regular Darkhast No. 25 of 2010 issuing possession warrant in respect of the suit premises.

3] The impugned order has been made in execution of decree for eviction dated 25th March 2010 made by the Trial Judge. In fact, as against the decree dated 25th March 2010, the petitioners had instituted Appeal No. 5 of 2011 on 30th June 2010. The Appeal Court, on 11th March 2011, stayed the execution of the decree dated 25th March 2010.

4] Pending the appeal, the sole respondent/landlord expired on 25th April 2011. Necessary intimation purshis was filed on 11th October 2011. On 13th January 2012, the petitioners filed an application (Exhibit-22) seeking condonation of delay of 83 days and to set aside abatement. Separate application at Exhibit 24 to bring on record the legal representatives of the sole respondent/landlord was also filed. Both these applications were heard by the Appeal Court and reserved for orders. However, it appears that no orders were made thereon.

5] In the meanwhile, the respondents applied for issuance of possession warrant before the Executing Court. By impugned order dated 7th March 2017, the Executing Court has issued the possession warrant, but stayed its own order up to 29th March 2017. This interim order was continued by this Court.

6] Mr. S.S. Diwan, learned counsel for the petitioners, submits that the applications for condonation of delay and setting aside abatement and to bring on record the legal representatives of the landlord/respondent are still pending before the Appeal Court. In

such circumstances, it cannot be said that the stay order granted on 11th March 2011 came to an end. In any case, Mr. Diwan submits that interests of justice would require the continuation of such stay order or at least restoration of such stay order pending decision on applications seeking condonation of delay, setting aside the abatement and to bring on record the legal representatives of the landlord/respondent.

7] On the basis of instructions, Mr. Diwan submits that the petitioners can always be put to terms. In this regard, he has produced on record the valuation report and in terms thereof, he submits that the petitioners are willing to deposit, without prejudice, an amount of Rs.10,000/- per month for restoration/continuation of stay order, in terms of rulings of Hon'ble Apex Court in cases of *Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited*¹ and *State of Maharashtra & anr. Vs. M/s. Super Max International Pvt. Ltd. & Ors.*² . On instructions, he submits that such amount can be withdrawn by the landlords again without prejudice and subject to final orders that may be made in the appeal.

1 2005(1) SCC 705

2 2009(5)ALL MR 1001

Mr. Diwan submits that the right of appeal is a valuable right and the same may not be denied to the petitioners. Mr. Diwan submits that in case the impugned decree is executed, the petitioners' right to appeal will be substantially rendered infructuous.

8] Mr. Tajane, learned counsel for the respondent-landlords, submits that the petitioners did file applications for condonation of delay, setting aside abatement and to bring on record the legal representatives of the landlord/respondent. However, such applications were never pursued for almost four years. In these circumstances, the Executing Court was entirely justified in issuing possession warrant, since the appeal had already abated and the stay vacated. Without prejudice, Mr. Tajane submits that the reasonable compensation in respect of suit premises would be at least Rs.40,000/- per month since the suit premises are in the city and are being used for commercial purposes.

9] In this case, there is no dispute that the petitioners had filed applications for setting aside the abatement and such application is pending before the Appeal Court. The application was filed after

delay of about 83 days and therefore, there is also an application seeking condonation of delay pending before the appeal Court. It is true that the petitioners did not pursue these applications. However, the explanation of the petitioners is that the two applications were argued and posted for orders and therefore, there was nothing for the petitioners to pursue. There is no dispute, however, that the two applications are pending and are not yet disposed of.

10] In the aforesaid circumstances, further execution proceedings are required to be stayed, so that the Appeal Court can dispose of the applications seeking condonation of delay, setting aside of abatement and to bring on record the legal representatives of the landlord/respondent. Such stay, however, cannot be unconditional in the facts and circumstances of the present case.

11] To the credit of learned counsel for the parties, it is required to be noted that without prejudice to their respective contentions, they have adopted a fair approach. Although, there is dispute with regard to the quantum of reasonable compensation, by and far, the approach suggested by learned counsel for the parties, without prejudice, has been fair.

12] The interests of justice will be met if, the petitioners are directed to deposit before the Appeal Court compensation at the rate of Rs. 15000/- per month with effect from 1st March 2011 till 30th September 2017 on or before 30th September 2017. From out of such deposited amount, the respondents are permitted to withdraw 50% of the amount, without furnishing any security, but by merely filing an affidavit/undertaking to the effect that such withdrawal will abide by the final orders that shall be made by the Appeal Court.

13] Upon deposit as aforesaid, the Appeal Court to rehear the arguments in the pending civil applications seeking condonation of delay, setting aside abatement and to bring on record the legal representatives of the landlord/respondent and dispose of the same by 15th November 2017.

14] In case, the delay is condoned and the abatement is set aside, the Appeal Court is directed to take up the petitioners' application for stay (Exhibit-7), by treating the stay order now granted by this Court, as only an ad-interim stay. At that stage, the Appeal Court to determine the reasonable compensation amount afresh and make

suitable directions for deposit of the same. Both the parties are at liberty to place the material on record which will assist the learned Appeal Judge in determining the reasonable compensation.

15] This petition is disposed of in the aforesaid terms. Further the execution of the decree dated 25th March 2010 is stayed by way of ad-interim relief. In case of failure on the part of the petitioners to comply with directions with regard to deposit, this ad-interim relief shall stand vacated.

16] The parties to appear before the Appeal Court on 4th September 2017 at 11.00 a.m. and produce an authenticated copy of this order.

17] Rule is made partly absolute to the aforesaid extent. There shall be no order as to costs.

18] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)