

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.2/2017
IN
Civil Application NO.197/2016
IN
Civil Revision Application NO.27/2016

Mrs. Noorjahan Burhan Ahmed

... Petitioner

V/s.

Mohammed Zubair A. S. Merchant & Ors.

... Respondents

Mr. M. L. Palan, Senior Advocate i/b. V. K. Gupta for the petitioner
Mr. Owen Menezes i/b. Sean Wassoodew for the Respondents.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 7, 2017

PC. :

1. Heard the learned counsel for the parties. By this review petition, the petitioner is seeking to review the order dated 25.04.2015 passed by this court in Civil Application No.197/2015 in Civil Revision Application No.27/2016 directing the petitioner to deposit interim compensation @ Rs.30,000/- pm in respect of the suit premises from August 2009 till hearing and final disposal of the Civil Revision Application.

2. Against the said order, the petitioner had preferred Special Leave Petition No.23588/2016 before the apex court, which was dismissed vide order dated 26.08.2016. Thereafter the petitioner filed the present review petition.

3. The learned counsel for the petitioner submits that during pendency of the Civil Revision Application, there is no question of directing the occupant of the suit premises to deposit sum of Rs.30000/- pm. He submits that the order for mesne profits can be passed only as and when the final decree is passed. He submits that the order for the mense profits can be passed for three years prior to the date of final decree. He relies on the judgment of the apex court in *Lucy Kochuvareed Vs. P. Mariappa Gounder and Ors. AIR 1979 SC 1214* and judgment in *Mohd. Amin and Ors. V. Vakil Ahmad and Ors. AIR 1952 SC 358*. He submits that in the present proceedings the court has directed the review petitioner to deposit mesne profits which is contrary to law. Hence, the said order is required to be reviewed and set aside.

4. On the other hand, the learned counsel for the respondent vehemently opposed the review petition. He submits that the petitioner had preferred SLP which was dismissed. He submits that this court, by order dated 25.04.2015 in Civil Application No.197/2016 directed the petitioner to deposit sum of Rs.30000/- pm by way of interim compensation in respect of the suit premises from the date of decree passed by the appellate court in August 2009. He submits that even the apex court in *State of Maharashtra & Anr. Vs. Super Max International Pvt. Ltd. & Ors. 2009 9 SCC 772* directed the occupant to pay compensation from the date of decree only. Hence, there is no substance in the Review Petition.

5. It is to be noted that, under the guise of the review petition, the petitioner is seeking to re-argue the entire matter. The law is well

settled in the matter of Super Max (supra). In any case, this court, by order dated 25.04.2016 directed the petitioner to deposit sum of Rs.30000/- by way of interim compensation. There is no question of directing the petitioner to pay *mesne profit* at all. Mesne profit can be decided when the appellate court passes a final decree.

6. Considering the fact that as the petitioner is seeking to re-argue the entire matter, that cannot be allowed. Hence, the review petition stands dismissed.

(K.K. TATED, J.)