

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1341 OF 2018

Batuk Gokaldas Morjaria & Ors.	..	Petitioners
Versus		
IndusInd Media & Communications Ltd.	..	Respondent
and		
Additional Registrar		in custody of suit premises

Mr. J.G.Damani for petitioners
Mr. Shramik Pasi I/b. Ms. U.D.Jaisingh for respondent No.1.

CORAM : M.S.SONAK, J.

DATE : 3rd December 2018.

P.C.

Heard learned Counsel for the parties. The challenge in this petition is to the orders dated 5th January 2015 and 30th November 2016 made by the appellate bench of the small causes court, in effect, reversing the order dated 6th September 2013 made by the Small Causes Court directing the respondents to deposit compensation at Rs.20,000/- per month in respect of the suit premises, for the period from December 2011 to September 2013 and to further continue making such deposits during the pendency

of the proceedings before the Small Causes Court.

2] Mr. Damani, learned Counsel for the petitioner submits that the appellate bench erred in interfering with the order of the Small Causes Court. He submits that the appellate bench has incorrectly held that the respondents offered to hand over possession of the suit premises to the petitioners and it is the petitioners, who refused to take over the possession. He submits that the appellate bench also erred in interfering with the order for deposit of compensation on the alleged ground that the respondent were not using the suit premises. He submits that since the possession of the suit premises is yet to be handed over to the petitioner and continues in the possession of the Additional Registrar, an order for payment of compensation which was made by the Small Causes Court, was incorrectly interfered with.

3] Mr. Pasi, learned Counsel for the respondents submits that the possession of the suit premises is no longer with the respondents. The respondents have time and again offered to hand over the possession but the petitioners refused to take over on

the ground that the suit premises are in dilapidated condition and unfit for any user. He points out that the petitioners are also holding on to the security deposit of almost Rs.3 lakhs. He submits that there is no error in the impugned order and, therefore, this petition may be dismissed.

4] Having considered rival submissions and perused the material on record, there is no case made out to interfere with the impugned order because the revisional court has in fact kept open the issue as to whether any compensation is at all payable in respect of the suit premises. The issue has been kept open because, there are claims and counter claims raised by both sides, which are quite evident from the rival contentions raised before me today.

5] In the impugned order, there is a reference to a certain notice issued by the respondents to the petitioners in relation to taking over possession of the suit premises. However, the petitioner contends that the premises have been deliberately destroyed by the respondents and, therefore, the respondents cannot avoid payment

of compensation. All these are matters which will require evidence and, therefore, the revisional court has quite correctly kept such issues open for determination at the time of final disposal of the suit. By this time, both parties would have led their evidence and that would accordingly be the appropriate stage of determining the issue of compensation.

6] The reasoning of the appellate bench is, to certain extent, reflected in para 7 of the impugned order dated 5th January 2015, which reads as follows:-

“7. We are intending to keep this point open before the trial court at the time of final disposal of the suit. The trial Court has to decide whether the defendant is using the suit premises after April, 2008. Under such circumstances, the order passed by the trial court cannot be upheld. The trial court failed to consider the fact that the plaintiff has disconnected the electricity supply from the suit premises since April 2008. The trial court also failed to consider the fact that the defendant has issued notice to the plaintiff asking him to take the possession of the suit premises. Under such circumstances, the order directing the defendant to pay the interim compensation as per order passed by the trial court does not sustain and liable to be set aside. The order passed by the trial court is not legal and correct and hence interference is necessary in it at the hands of this court. In the result, we record our finding to the points accordingly and proceed to pass the following order.”

7] By the order dated 30th November 2016, the appellate bench has dismissed the review against the order dated 5th January 2015. The appellate bench has rightly pointed out that there was no error apparent on the face of record in the order dated 5th January 2015, so as to exercise the review jurisdiction.

8] Since the issue of compensation has been left open, there is no case made out to interfere with the impugned orders in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution.

9] The Small Causes Court to proceed with the suit and decide all issues including the issue of compensation, which has not been left for determination to the Small Causes Court by the impugned order.

10] Petition is accordingly dismissed. There shall be no order as to costs.

(M.S.SONAK, J.)