

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 2483 OF 2018

Mr. Ashok Laxman Sankpal (since deceased)	]	
1(a) Shubhangi Ashok Sankpal & Ors.	]	Petitioners
Vs.		
Mrs. Shashikala @ Sumitra Manohar Khatu	]	Respondent

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Mr. Pradeep J. Ramchandani, for Petitioners.
Mr. Haridas R. M., for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 24TH APRIL, 2018.

P.C.

Not on board. At the request of Mr. Ramchandani, taken up for admission.

Heard Mr. Ramchandani, learned Counsel for the petitioners and Mr. Haridas, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 28th July, 2017 passed by the Appellate Bench of Small Causes Court, Mumbai below Exhibit 8 in Appeal No.476 of 2016 arising out of R.A.E. Suit No.185/301 of 2011. By that order, the Appellate Court allowed the application Exhibit 8 filed by the petitioners/defendants for stay of execution of the eviction decree dated 30th July, 2016 passed by the learned Judge in R.A.E Suit No.185/301 of 2011 subject to the petitioners depositing a sum of Rs. 7500/- per month on or before 10th day of each months as compensation for the use and occupation of

the suit premises from the date of the decree i.e from 30th July, 2016 till the decision of the appeal and shall continue to deposit at the same rate on or before 10th day of each succeeding month till the decision of the present appeal among other directions.

3. Rule. Mr. Haridas waives service. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the learned Counsel for the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

4. The matter was heard on 5th March, 2018. Statements made by Mr. Ramchandani were recorded in paragraph 3. It was noted that the Appellate Court proceeded to fix interim compensation on the footing that area of the suit premises is 250 square feet. In paragraph 3 of the plaint area of the suit premises i.e Room No.6 was mentioned as 180 square feet.

5. In view thereof, the petitioners were directed to deposit arrears of compensation @ Rs. 3,000/- per month. Mr. Ramchandani submits that he has complied order dated 5th March, 2018. He submitted that in the impugned order, the amount of compensation of Rs. 7500/- may be substituted by amount of Rs. 3000/- per month.

6. Mr. Haridas supported the impugned order. He invited my attention to paragraph 8 of the impugned order to contend that the petitioners did not file rejoinder denying claim of Rs. 15,000/- per month made by the respondent herein. Despite this, the Appellate Court awarded compensation @ Rs. 7500/- per month. In any case, he submitted that if the Court is inclined to accede to the request of the petitioners, having regard to the fact that the respondent is senior citizen and suit is instituted invoking ground of bona fide

requirement, the Appellate Court may be directed to decide the appeal in a time bound manner.

7. I have perused rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. It is not in dispute that in paragraph 3 of the plaint, area of the suit premises is mentioned as 180 square feet. The Appellate Court, however, proceeded on the footing that area of the suit premises is 250 square feet. That apart, the Appellate Court while fixing the interim compensation did not consider the statements recorded in paragraph 3 of the impugned order. In view thereof, order directing the deposit of compensation @ Rs. 7500/- requires to be modified. In place of compensation of Rs. 7500/-, the same shall be substituted by amount of Rs. 3,000/- per month. Rest of the impugned order remains as it is.

8. Having regard to the fact that the suit is instituted only u/s 16 (1) (g) of the Maharashtra Rent Control Act 1999 and further having regard to the fact that the plaintiff is a senior citizen, the Appellate Court is directed to expedite hearing of the appeal. If application is made for fixing peremptory date for hearing the appeal, the Appellate Court will consider the same in accordance with law. Petitioner shall deposit compensation for the months of March and April, 2018 @ Rs.3,000/- within two weeks from the date of this order in the trial Court and shall comply the order of the Appellate Court as modified.

9. Rule is made absolute in the aforesaid terms with no order as to costs.

[R.G. KETKAR, J.]