

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1362 OF 2018
IN
FIRST APPEAL NO.398 OF 2018**

Mahanagar Telephone Nigam Ltd. .. Applicant

V/s.

Hanumant D. Jagdale Prop. Of Swasti
Enterprises .. Respondents

Ms.Dikshita P. Gupte for the applicant

Mr.P.K.Dhakephalkar, Sr.Counsel with Mr.Harshad Bhadbhade i/b
Mr.Anwar Landge for the respondent no.1

**CORAM: K.K. TATED &
SANDEEP K. SHINDE, JJ.**

DATED : SEPTEMBER 18, 2018

P.C. :

1 Heard.

2 By this Civil Application, Applicant original defendant no.2 seeks stay of the operation and implementation of the order dated 18.12.2017 passed by Civil Judge, Senior Division, Thane in Special Civil Suit No. 120 of 2014 by which the Trial Court directed Applicant to hand over vacant and peaceful possession of the suit property i.e. admeasuring 5003.21 sq.ft on the ground and first floor of the premises

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known as 'Anchor Shop', Ashar Residency, Thane to the Respondent original plaintiff. Trial Court also directed Applicant original defendant to pay monthly compensation and service charges @ Rs.135 per sq.ft. per month for the period 02.01.2010 to 01.01.2012 with interest @ 10% p.a. and @ 200 per sq.ft. per month for the period 02.01.2012 to 01.02.2014 with interest @ 10% p.a.

3 The learned counsel for the Applicant submits that they already filed their affidavit cum undertaking dated 07.09.2018 duly affirmed by Arunprakash Kamble, Sr.Manager (Legal) E-II, stating that they will hand over vacant and peaceful possession of the suit property to the Respondent original plaintiff within one year i.e. on or before 31.07.2019. Therefore, decree be stayed to the extent of handing over possession of suit property to the plaintiffs till 31.07.2019.

4 The learned counsel for the applicant submits that Trial Court granted compensation on higher side. Same is in dispute in the present proceedings. She submits that they already deposited sum of Rs.3,17,93,106/- in the Trial Court in compliance of clause no.1(c) and (d) of the operative part of the impugned judgment and decree dated 18.12.2017 which reads thus:

“1(c) The defendant company shall pay the monthly compensation @ 135/- per sq.ft. Per month for the period 02.01.2010 to 01.01.2012 with interest @ 10% per annum.

1(d) The defendant company shall pay monthly compensation and the service charges @ Rs.200/- per sq.ft. per month for the period 02.01.2012 till 01.02.2014 with interest @ 10% per annum.”

5 Statement is accepted. The learned Senior Counsel for the Respondent plaintiff submits that the same may be subject to the accounting.

6 Considering the submissions made by the learned counsel for the Applicant original defendant and the averments made in the Application, we are satisfied that the Applicant has made out a case for allowing the present Civil Application. Hence, following order:

- a) Respondent original plaintiff are restrained by an order of injunction from disturbing the Applicant's possession in respect of the suit property till 31.07.2019.
- b) The amount deposited by the Applicant in Trial Court be invested in fixed deposit of any nationalised bank initially for a period of one year and same be continued till further orders.
- c) Liberty granted to the Respondent original plaintiff if they so desire to prefer appropriate Application for withdrawal of the said amount and that be decided on its own merits.
- d) Civil application stands disposed off accordingly with these directions.
- e) No order as to costs.

(SANDEEP K. SHINDE, J.)

(K.K. TATED, J.)