

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8645 OF 2018
WITH
CIVIL APPLICATION NO.1702 OF 2018

Ramesh Bhau Kurne ... Petitioner
Vs.
Sumita Vaydande ... Respondent

Mr. M. S. Prasad for Petitioner.
Mr. R. N. Jawal for Respondent.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 14, 2018

P.C. :

Heard Mr. Prasad, learned Counsel for the petitioner and Mr. Jawal, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner / original defendant has challenged the order dated 14.02.2018 passed by the Appellate Bench of the Small Causes Court at Bombay (Bandra Branch) below exhibit-6 in (P) Appeal No.124 of 2017. By that order, the Appellate Court allowed the application exhibit-6 filed by the petitioner-defendant under Order XLI, Rule 5 of Code of Civil Procedure, 1908 (for short 'C.P.C.') and stayed eviction decree dated 27.07.2015 passed by the learned trial Judge in L.E.Suit No.103/151 of 2008 till disposal of the appeal subject to imposing conditions in terms of clause 2(i) to (iv) of the operative part of the impugned order. Rule. Mr. Jawal waives service for respondent. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. Mr. Prasad submitted that the Appellate Court proceeded on the footing that the suit premises admeasures 250 sq.ft. He invited my attention to the description of the suit premises in paragraph 1 of the trial Court's order dated 27.07.2015. In paragraph 1, the learned trial Judge observed that the suit premises namely, room No.1, ground floor, Yadav Chawl, Mulgaon Dongari, Old Ashram, A. K. Road, Andheri (East), Mumbai 400 093 admeasures 150 sq.ft.

4. During the course of hearing, it was indicated to the parties that the interim compensation @ Rs.2,000/- per month is on the higher side having regard to the area where the suit premises is situate and the surrounding circumstances. It was, therefore, suggested that Rs.1,000/- per month will be the reasonable compensation. Mr. Prasad submits that petitioner is present in the Court. He has tendered photocopy of his driving licence, which is taken on record and marked 'A' for identification. Mr. Jawal submits that son of the respondent, Mr.Narayan Tukaram Waydande is present in the Court. He has tendered photocopy of his Aadhar Card, which is taken on record and marked 'B' for identification. Upon taking instructions from them, the learned Counsel for the parties submit that by consent, interim compensation may be reduced from Rs.2,000/- to Rs.1,000/- per month. Mr. Prasad, on instructions, states that petitioner will deposit arrears of compensation @ Rs.1,000/- per month within 8 weeks from today and will not seek further extension of time. Statements made on instructions are accepted.

5. In view thereof, Petition is disposed of in the following terms:

- a. The monthly compensation of “Rs.2,000/-” provided in sub-clauses (i) and (ii) of clause 2 of the operative part of the order dated 14.02.2018 stand substituted by “Rs.1,000/-”;

- b. The petitioner will deposit the arrears of compensation @ Rs.1,000/- per month within 8 weeks from today in the trial Court under intimation in writing to the respondent's Advocate and will not seek further extension of time;
- c. The rest of the impugned order is maintained;
- d. Rule is made absolute in the aforesaid terms with no order as to costs.

6. In view of the disposal of the Petition, Civil Application No.1702 of 2018 does not survive and the same is disposed of accordingly.

(R. G. KETKAR, J.)

Minal Parab