

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.6724 OF 2018**

Ramesh Khubchand Bajaj] Petitioner

Vs.

Shakir Asmat Iftekhari] Respondent

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Mr. Vijaykumar Swami, for Petitioner.

Mr. S.R. Nargolkar i/b Sachin B. Londhe, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 26TH JULY, 2018.

P.C.

Heard Mr. Swami, learned Counsel for the petitioner and Mr. Nargolkar, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 31st March, 2018 passed by the learned District Judge-12, Pune below Exhibit 46 in Civil Appeal No.288 of 2017. By that order, the learned District Judge allowed the application Exhibit 46 moved by the respondent, herein for stay to the execution and operation of the decree passed in Civil Suit No.257 of 2015.

3. The petitioner, hereinafter referred to as “plaintiff” had instituted Civil Suit No.257 of 2015, inter alia, contending that the respondent hereinafter referred to as “defendant” is a licensee in respect of the suit premises. The plaintiff sought possession of Shop Nos. 1 and 2 admeasuring 400 square feet plus loft and shed admeasuring 800 square feet situate on the ground floor of the building known as “Bajaj Chambers” Plot No.295 at Pimpri Camp within the limits of Pimpri Chinchwad Municipal Corporation (for short “suit premises”). The suit was decreed on 30th March, 2017. The learned trial Judge directed the defendant to hand over vacant and peaceful possession of

the suit premises within three months from the date of the decree. The learned trial Judge further directed the defendant to pay licence fee/damages to the tune of Rs.17,98,000/-.

4. Aggrieved by that decision, the defendant preferred appeal before the learned District Judge. Pending that appeal, he took out application Exhibit 5 for stay of the eviction decree. By order dated 27th June, 2017, the learned District Judge allowed application Exhibit 5 and stayed eviction decree subject to the defendant depositing decretal amount of Rs.17,98,000/- within next three months from the date of the order.

5. The defendant filed application Exhibit 16 on 1st September, 2017 seeking permission to deposit Rs. 4,50,000/-. By order dated 11th September, 2017, the learned District Judge disposed of the application on the ground that it is pre-mature as while passing order on 27th June, 2017 three months time was granted to the defendant to deposit decretal amount of Rs.17,98,000/-. The defendant thereafter filed application Exhibit 18 on 27th September, 2017, inter alia, contending that he had brought demand draft of Rs. 11,00,000/- and Nazir of the Court be directed to accept demand draft and he may be given 4 months time to deposit remaining amount of Rs. 6,98,000/-. On 13th October, 2017, defendant filed Exhibit 21, inter alia, for issuing direction to Nazir of the Court to accept demand draft of Rs. 2,00,000/- and seeking four months time to deposit Rs.4,98,000/-. The learned District Judge directed Nazir to accept Rs.2,00,000/- without prejudice to the rights and contentions of the other side on 13th October, 2017. Thereafter, on 25th October, 2017, the defendant deposited Rs. 3,00,000/-. On 15th November, 2017, he deposited Rs. 1,00,000/-. On 30th November, 2017, the defendant deposited Rs. 99,000/-. Thus, by 30th November, 2017, the defendant deposited entire amount.

6. The plaintiff was also permitted to withdraw Rs. 17,000,00/- and subsequently remaining amount of Rs. 98,000/- was also withdrawn. As the plaintiff proceeded for execution, defendant filed application at Exhibit 46 on 12th March, 2018 for staying eviction decree. By the impugned order, the learned District Judge after noting that defendant has complied order dated 27th June, 2017 by depositing entire amount of Rs. 17,98,000/- , albeit, beyond the period of three months clarified that eviction decree is stayed. It is against this order, the plaintiff has preferred this Petition.

7. In support of this Petition, Mr. Swami submitted that defendant admittedly did not deposit Rs.17,98,000/- within three months from 27th June, 2017 and went on depositing amount in parts. He submitted that as the defendant did not deposit the amount within the stipulated time as per the order dated 27th June, 2017, the stay may be vacated. In support of his submissions, he relied on paragraph 44 of the Apex Court judgment in the case of **State of Maharashtra and another Vs. Super Max International Private Limited and others, (2009) 9 Supreme Court Cases 772.**

8. On the other hand, Mr. Nargolkar submitted that the defendant had deposited entire decretal amount of Rs. 17,98,000/- and the said amount is also withdrawn by the plaintiff. As the defendant has complied order dated 27th June, 2017, no case is made out for vacating stay. If stay is vacated, the appeal will be rendered infructuous.

9. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, after the suit was decreed, the defendant preferred appeal and took out application Exhibit 5 for stay. That application was allowed after hearing both the sides and eviction decree was stayed subject to the defendant depositing

Rs. 17,98,000/- within three months. It is no doubt true that within three months, the defendant did not deposit Rs. 17,98,000/-. None the less, it is not disputed that the defendant has ultimately complied the order dated 27th June, 2017 by depositing decretal amount of Rs. 17,98,000/-. As the defendant has deposited entire decretal amount, it is not possible to accept request of Mr. Swami to vacate stay. If the stay is vacated, the appeal will be rendered infructuous.

10. Mr. Swami submitted that the learned District Judge simply directed the defendant to deposit decretal amount of Rs.17,98,000/-. He submitted that in fact, when leave and licence agreement was executed on 10th July, 2010, licence fee @ Rs. 50,000/- per month was fixed for a period of first 12 months with increase of 10% after expiry of every 12 months i.e Rs. 55,000/- for next term of 12 months and Rs. 60,500/- per month for the last term of 12 months. He submitted that the plaintiff has taken out application in the District Court for directing the defendant to pay monthly licence fee and the said application is pending. He submitted that District Court may be directed to decide that application in a time bound manner.

11. In view thereof, liberty is reserved to the plaintiff to file application for disposing of that application in a time bound manner. The learned District Judge will pass appropriate order on such application.

12. In view of aforesaid discussion, no case is made out for interfering with the impugned order. Hence, Writ Petition fails and the same is dismissed with no order as to costs.

[R.G. KETKAR, J.]