

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.223 OF 2018

Shraddha Jagdish Acharekar ...Petitioner

vs.

Mamta Mahipath Surve and Ors. ...Respondents

Mr. Akshay Pawar h/f. Mr. Kunal Bhanage, for the Petitioner
Mr. Mahesh Pandey, for the Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 22, 2018

JUDGMENT

. Heard Mr. Akshay Pawar, learned counsel for the
Petitioner and Mr. Mahesh Pandey learned counsel for the
Respondent No. 1.

2. The learned counsel for the Petitioner submits that the
presence of Respondent Nos. 2 and 3 is not necessary for the issue
raised in the present Petition. He accordingly seeks leave to delete
the said Respondents. Leave is granted. Necessary amendment to
be carried out forthwith.

3. Rule.

4. Rule is made returnable forthwith with consent and
request of the learned counsel for the parties.

5. On 3rd April, 2018 this Court made the following order:

. Not on Board. At the request of Ms Thaker, learned Counsel for the petitioner, taken up in the production Board.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'obstructionist', has challenged the judgment and order dated 16.02.2017 passed by the appellate Bench of the Small Causes Court at Bombay below exhibit-6 in (E) Appeal No.9 of 2011. By that order, the appellate Court stayed the operation of order dated 01.10.2011 passed by the learned Judge, Court Room No.34 of the Small Causes Court in Obstructionist Notice No.2 of 2007 filed in R.A.E.Suit No.219 of 2004 subject to the obstructionist depositing monthly compensation @ Rs.4,000/- from the date of judgment i.e.01.10.2011 upto 31.01.2017, within three months from the date of the order and shall continue to deposit the compensation in respect of the suit premises @ Rs.4,000/- from 01.02.2017 and onwards till disposal of the appeal on or before 10th day of each succeeding month in the Court, among other directions.

3. In support of this Petition, Ms Thaker submitted that the area of the suit premises i.e. room No.3 is 10' x 20' ft. She has invited my attention to paragraph 2 of the plaint of R.A.E. Suit No.219 of 2004 as also paragraphs 2 and 5 of examination-in-chief of the plaintiffs where area of room No.3 is mentioned as 10' x 20' ft. The learned trial Judge, while passing the order on 01.10.2011, observed that the area of room No.3 is 20' x 20' ft. Even appellate Court, while passing the impugned order, in paragraph 8, proceeded on the footing that room No.3 admeasures 400 sq.ft. She submitted that basically area is 10' x 20' ft. i.e. 200 sq.ft. She further submitted that suit premises is situate in the slum area.

4. In view of this, issue notice before admission to the respondent No.1 for the time being, returnable on

25.04.2018. Notice to indicate that subject to the time constraint and convenience of the Court, Petition will be disposed of finally at the stage of admission. Notice shall further indicate that if despite service, respondent No.1 fails to appear, the Court will proceed to hear the Petition on its own merits.

5. In the meantime, petitioner shall deposit arrears of compensation @ Rs.2,000/- per month from the date of the judgment i.e. 01.10.2011 upto 31.01.2017 in this Court before the next date of hearing and shall continue to deposit compensation @ Rs.2,000/- per month from 01.02.2017 until further orders. Subject to petitioner depositing arrears of compensation @ Rs.2,000/- per month from 01.10.2011 upto 31.01.2017, before the next date of hearing, there shall be ad-interim order in terms of prayer clause (b).

6. It is made clear that in case the petitioner does not deposit arrears of compensation @ Rs.2,000/- per month before the next date of hearing, ad-interim order shall stand vacated without further reference to the Court.

6. As noted in the aforesaid order, in the pleadings as well as in the affidavit in lieu of examination in chief on behalf of Respondent No. 1, the area of the suit premises was indicated as 200 sq.ft. Mr. Pandey, learned counsel for the Respondent points out that in fact the Petitioner is occupying 400 sq.ft area and there was only a typographical error in the Plaint as well as in the affidavit in lieu of examination in chief. Admittedly, at no stage was such alleged typographical ever corrected. Today as the record

stands, the area of the suit premises in occupation of the Petitioner is 200 sq.fts and not 400 sq.fts.

7. In the impugned order dated 16th February, 2017, the compensation of Rs. 4,000/- p.m has been determined on the basis of area of the suit premises is 400 sq.ft. Now that record indicates that area of the suit premises is 200 sq.ft. The compensation amount will have to be reduced to Rs. 2,000/- p.m.

8. The aforesaid does not mean that the Respondent is precluded from contending that the actual area of the suit premises is 400 sq.fts. For this, the Respondent may propose to lead evidence at the stage of final determination of mense profit, if at all such stage arises in the matter. The issue is therefore, left open. However, at the present stage, we will have to proceed on the basis that the area of the suit premises is 200 sq. ft and on such basis determination the compensation of Rs. 2,000/- p.m instead of Rs. 4,000/- p.m. This Petition, is therefore, disposed of by modifying the impugned order dated 16th February, 2017.

9. Save and except this modification, no other modification is called for in the impugned order dated 16th February, 2017.

10. If any excess amounts have been deposited by the

Petitioner, the same are liable to be adjusted.

11. The rule is made absolute in the aforesaid terms. There shall be no order as to costs.

12. All concerned to act on the basis of authenticated copy of this order.

13. The learned counsel for the Respondent No. 1 points out that Respondent No. 1 is a senior citizen and the Appeal before the Appeal Court is pending since last 6 years. The Appeal Court, is therefore directed to dispose of the pending Appeal as expeditiously as possible and in any case before 31st December, 2019.

(M. S. SONAK, J.)