

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8720 OF 2017

Gautam Mohanlal Kamdar ... Petitioner
Vs.
Prakash Rangnath Thakur and others ... Respondents

Mr. Yogendra Rajgor i/b. M/s. Legal Chartered for Petitioner.
Mr. Jaydeep Deo for Respondents No.2 to 4.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 26, 2018

P.C. :

Heard Mr. Rajgor, learned Counsel for the petitioner and Mr. Deo, learned Counsel for the respondents No.2 to 4 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.1', has challenged the order dated 27.02.2017 passed by the learned Principal District Judge, Pune below exhibit-5 in Civil Appeal No.564 of 2016. By that order, the learned District Judge stayed the eviction decree passed by the learned trial Judge on 22.04.2016 in Civil Suit No.247 of 2005 subject to the following conditions:

“(1) The appellant (petitioner / defendant No.1) shall deposit arrears of compensation at the rate of Rs.12,500/- (Rs.Twelve thousand five hundred only) per month towards use and occupation of the suit premises from May 2016 to February 2017, within a period of three months from the date of this order.

(2) The appellant (petitioner / defendant No.1) shall continue to deposit the interim monthly compensation of Rs.12,500/- per month pending the hearing and final disposal of this appeal for ensuing months on or before 10th day of each month.

(3) The appellant (petitioner / defendant No.1) shall deposit

arrears of agreed compensation at the rate of Rs.65/- per month from May 2016 till passing of this order within a period of three weeks from the date of this order, if not deposited.

(4) The appellant (petitioner / defendant No.1) shall continue to deposit agreed compensation of Rs.65/- per month for every succeeding month on or before 10th day of each succeeding month.”

3. The learned District Judge permitted respondents No.1 and 2 to withdraw the arrears of agreed rent @ Rs.65/- per month. The learned District Judge directed investment of the interim compensation in any nationalised bank initially for a period of one year to be renewed yearly. The petitioner is also restrained from creating third party interest or parting with possession subject to furnishing an undertaking to that effect before the District Court.

4. In support of this Petition, Mr. Rajgor submitted that the interim compensation @ Rs.12,500/- fixed by the District Court is exorbitant and oppressive. The learned District Judge has not dealt with the leave and licence agreement dated 01.04.2015 produced by the defendant No.1. in respect of the shop premises admeasuring 586 sq.ft. situate in the same area. The licence fee in respect of the same area is Rs.25,000/- per month. The learned District Judge ought to have fixed the interim compensation on pro-rata basis by taking into consideration the area of the suit premises, which is 200 sq.ft. He submitted that defendant No.1 is ready and willing to pay interim compensation on pro-rata basis in respect of the suit premises. He, therefore, submitted that Petition requires consideration.

5. On the other hand, Mr. Deo supported the impugned order. He submitted that the suit premises is a commercial premises admeasuring 200 sq.ft. situate at Laxmi Road. He invited my attention to the finding recorded by the learned trial Judge against issue No.1. After considering

the evidence on record, the learned trial Judge held that defendant No.1 has unlawfully sublet the suit premises to the defendant No.2 and is profiteering therefrom. Defendant No.1 is charging Rs.15,000/- per month to the defendant No.2. As against this, the learned District Judge has fixed the interim compensation @ Rs.12,500/- per month. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. With the assistance of the learned Counsel appearing for the parties, I have perused the record. A perusal of the trial Court's order shows that the learned trial Judge had decreed the Suit on the ground of unlawful subletting as also on the ground that plaintiffs require the suit premises reasonably and bonafide. The learned trial Judge also decreed the Suit on the ground that the defendant No.1 is a defaulter. The issue of unlawful subletting is considered by the learned trial Judge from paragraph 35 onwards. After considering the evidence on record, in paragraph 44, the learned trial Judge held that defendant No.1 has parted with possession of the suit premises and defendant No.2 is in exclusive possession.

7. In so far as the impugned order is concerned, in paragraph 8, the learned District Judge has noted that the suit premises is situate at C.T.S.No.185/1, Budhwar Peth, Pune. It was further observed that “it is of common knowledge that Laxmi Road and Budhwar Peth is almost adjoining to one another and is a very popular business hub in the heart of Pune city”. The learned District Judge noted that defendant No.1 has unlawfully sublet the suit premises thereby profiteering himself to the tune of Rs.15,000/- per month.

8. Mr. Rajgor submitted that the learned District Judge has ignored the leave and licence agreement dated 01.04.2015 in respect of shop

premises admeasuring 586 sq.ft. situate in the same area. The licence fees in respect of the same area is Rs.25,000/- per month, and therefore, the learned District Judge ought to have fixed the interim compensation on pro-rata basis. I do not find any merit in this submission. The learned District Judge was justified in fixing the interim compensation on the basis of the findings recorded by the learned trial Judge, which inter alia include, finding of unlawful subletting by the defendant No.1 in favour of the defendant No.2 and charging Rs.15,000/- per month. The learned District Judge has correctly applied the principles laid down by the Apex Court in the case of ***Atma Ram Properties Limited Vs. Federal Motors (P) Ltd., 2005 (1) SCC 705***. In view thereof, I do not find that the learned District Judge has fixed the interim compensation exorbitantly or is oppressive. Hence, Petition fails and the same is dismissed. Liberty is reserved to the parties to apply for expeditious disposal of the appeal. If such application is made, the learned District Judge will pass appropriate order. The learned District Judge will decide the appeal on its own merits and uninfluenced by the observations made in this order. Order accordingly.

(R. G. KETKAR, J.)