

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11441 OF 2016

Sulochana Rameshchandra Jhaveri and others ... Petitioners
Vs.
Sunil D. Gajjar and another ... Respondents

Mr. Clive D'souza a/w. Mr. Chirag Mathuria for Petitioners.
None for Respondents.

CORAM : R. G. KETKAR, J.
DATE : MARCH 5, 2018

P.C. :

Heard Mr. D'souza, learned Counsel for petitioners at length.
None appears for respondents despite service.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 22.08.2015 passed by the Appellate Bench of the Small Causes Court by which the appellate Court allowed the application filed by Sunil Bhanubhai Gajjar, hereinafter referred to as 'obstructionist', for condoning the delay in depositing the amount of monthly compensation of Rs.20,000/- onwards for the use and occupation of the suit premises as a condition precedent for staying the execution of the decree. Petitioners have also sought modification of the order dated 06.08.2014 thereby enhancing the compensation from Rs.20,000/- per month to Rs.3,45,000/- per month exclusive of property taxes.

3. In support of this Petition, Mr. D'souza invited my attention to order dated 06.08.2014 passed by the Appellate Bench of the Small Causes Court below exhibit-7 in application preferred by the obstructionist for stay of the judgment and decree dated 05.04.2013 passed in Obstructionist Notice No.47 of 2007 arising from R.A.E.&R.

Suit No.750/1352 of 1999. After hearing both sides, the appellate Court allowed the application and stayed execution of the decree subject to obstructionist depositing an amount of contractual rent at the rate of Rs.250/- per month and compensation at the rate of Rs.20,000/- per month among other conditions. He submitted that in terms of clause 2(vi) of that order, obstructionist was directed to file undertaking to the effect that he will not part with the possession of the suit premises or create third party rights therein. He submitted that till date, the obstructionist has not complied that condition by filing undertaking.

4. He also invited my attention to the registered leave and licence agreement dated 11.04.2012 executed between Kalaigar Mosque Trust on the first part and Mohamed Hussain Abdulla on the second part in respect of shop No.32 admeasuring about 15.33 sq.mtrs. on the ground floor of Benazir House situate at Rustom Sidhwa Marg, Gunbow Street, Mumbai 400 001. The licensee had agreed to pay a sum of Rs.26,000/- per month as and by way of compensation. He submitted that having regard to the fact the area of suit premises is about 2468 sq.ft., the petitioners are entitled to get compensation of Rs.3,45,000/- per month. He, therefore, submitted that the order dated 06.08.2014 directing the obstructionist to pay monthly compensation of Rs.20,000/- plus contractual rent of Rs.250/- per month deserves to be modified.

5. During the course of hearing, I called upon Mr. D'souza to point out whether the leave and licence agreement was filed before the appellate Court while passing the impugned order on 22.08.2015. He fairly submitted that the said agreement was not produced before the appellate Court while passing the impugned order. He, therefore, submitted that the liberty may be reserved to the petitioners to file application claiming enhancement of the compensation on the basis of the said leave and licence agreement.

6. In so far as the contention that obstructionist has not complied condition 2(vi) of the order dated 06.08.2014 of filing undertaking, liberty is reserved to the petitioner to file application for vacating the interim order. In so far as the order dated 22.08.2015 is concerned, by that order, the appellate Court condoned the delay in complying order dated 06.08.2014. During the course of hearing, Mr. D'souza pointed out that obstructionist is regularly depositing contractual rent as also compensation @ Rs.20,000/- per month. In view thereof as also having regard to the fact that the order condoning the delay is purely a discretionary order, I do not find any case is made out for interfering with the order dated 22.08.2015 condoning the delay. Hence, subject to reserving liberty to the petitioners to file application for enhancement of compensation as also for vacating the interim order for not filing undertaking in terms of clause 2(vi) of the order dated 06.08.2014, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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