

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7650 OF 2018

M/s Pilky Thermoplast Pvt. Ltd.

...Petitioner

Versus

M/s Property Builders

And Ors

...Respondents

....

Mr.Vineet Naik, Senior Advocate i/b. Rakesh N. Reddy, Advocate for the Petitioner.

Mr.Amey Deshpande i/b. Gaurang Jhaveri, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 01st AUGUST, 2018

P.C.

1. Heard Mr.Vineet Naik, learned Senior Counsel for the petitioner and Mr.Amey Deshpande, learned counsel for the respondents, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 29.3.2018 passed by the learned District Judge-8, Thane below Exhibit-5 in Civil Appeal No.45/2017. By that order, the learned District Judge allowed the application made by the petitioner Exhibit-5 by passing following direction :

“[i] The execution of judgment and decree in R.C.S. No.2245/2012 dated 20.12.2016 is hereby stayed till the final decision of appeal subject to depositing

compensation in trial Court at the rate of Rs.75,000/- (Rupees Seventy Five Thousand only) per month by appellant for the period of 1.10.2012 to 31.3.2018 within a period of 2 (two) months from today and further to pay monthly compensation at the same rate on or before the 10th day of each month pending the hearing and final disposal of the appeal.

- [ii] The respondent is at liberty to withdraw arrears of compensation between the period of 1.10.2012 to 31.3.2018.
- [iii] The above amount deposited by appellant to be adjusted with the amount calculated after enquiry regarding mesne profit under O XX R 12 of C.P.C.
- [iv] It is made clear that above stay order would automatically stands vacated on failure to deposit arrears of compensation and further monthly compensation as ordered above within the time stipulated.”

3. Rule. Mr. Deshpande waives service on behalf of the respondents. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. It is common ground between the parties that respondent No.2 has expired on 30.1.2016 leaving behind respondents No.3 & 4 as his only heirs and legal representatives. Mr. Naik assures that the petitioner will bring them on record in the capacity of L.Rs. of respondent No.2 by filing appropriate application. He assures that on or before 3rd August, 2018, the petitioner will file such an application.

5. Mr. Naik submitted that the Indenture of Lease was executed by and between the parties on 16.12.1971 for a period of three years.

The lease was renewed from time to time and it was in force till 30.9.2012. The agreed lease rent was Rs.36,075/- per month. By the impugned order, the learned District Judge also permitted the respondents to withdraw the arrears of compensation between the period of 1.10.2012 and 31.3.2018 which is contrary to observations made by the Apex Court in **State of Maharashtra and another v. Super Max International Private Ltd. and others, (2009) 9 SCC 772**, and in particular paragraphs-79 & 80 thereof.

6. Mr. Deshpande supported the impugned order. He submitted that by order dated 18.7.2018, the respondents were permitted to withdraw Rs.18,40,000/- deposited by the petitioner in the District Court, Thane unconditionally. In pursuance of that order, the respondents filed application enclosing therewith copy of the order dated 18.7.2018 for withdrawal of the amount. The learned District Judge, however, directed other side to file reply. He submitted that in view of the specific direction issued by this Court, the learned District Judge was not justified in calling upon say of the other side. Be that as it may. The learned District Judge will permit the respondents to withdraw the amount of Rs.18,40,000/- unconditionally upon production of an authenticated copy of this order and without insisting for say of other side.

7. A perusal of the impugned order and in particular paragraph-13 shows that the learned District Judge has not recorded any reason for fixing the compensation @ Rs.75,000/- per month. On this count alone, the impugned order is set aside. The learned District Judge shall consider the application Exhibit-5 afresh in accordance with law. The parties are permitted to file additional material in support of their respective case. All contentions of the parties on merits are expressly kept open. The learned Counsel for the parties assure that within three weeks from today, they will file additional material in support of their case and serve copy during this period on the other side. The learned Counsel for the parties further assure that they will appear before the learned District Judge on 23.8.2018 and for that purpose no fresh notice be issued to them. The learned District Judge will fix suitable date and thereafter proceed to decide the application Exhibit-5 within three weeks from fixing suitable date. Rule is made absolute in aforesaid terms with no order as to costs. Liberty is reserved to the parties to apply for expeditious disposal of the appeal in a time bound manner. If such application is made, the learned District Judge will pass appropriate orders. Order accordingly.

(R. G. KETKAR, J.)

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Deshmane
Digitally signed
by Pradipkumar
Prakashrao
Deshmane
Date: 2018.08.02
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Deshmane (PS)