

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 670 OF 2017

M/s. E. S. Peareylal
And Anr

...Petitioners

Versus

Mrs. Mita Harish Sujan
Through CA, Mr. Prithviraj Singh

...Respondent

....

Mr. Shardul Singh I/b. Akshay P. Shinde, Advocate for the Petitioners.
Mr. A.G. Revankar I/b. A.G. Revankar & Co. for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 02nd AUGUST, 2018

P.C.

1. Heard Mr.Shardul Singh, learned counsel for the petitioners and Mr.A.G. Revankar, learned counsel for the respondent, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 4.4.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibit-9 in (A-1) Appeal No.469/2015. By that order, the learned Appellate Court allowed the application made by the defendants under Order XLI, Rule 5 of C.P.C. and stayed execution of the judgment and decree dated

28.8.2015 passed by the learned trial Judge in R.A.E. Suit No.1243/1867 of 2009 subject to the defendants depositing compensation @ Rs.50,000/- per month for the period from 28.8.2015 upto April, 2016, on or before the next date of hearing. Defendants are further directed to go on depositing further monthly compensation @ Rs.50,000/- per month, on or before 15th day of each month till final disposal of the appeal. Upon deposit, the office is directed to invest that amount. The defendants are also directed not to part with possession of the suit premises and not to create third party interest therein.

3. Rule. Mr.Revankar waives service. 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. Mr. Singh submitted that while directing the defendants to deposit interim compensation @ Rs.50,000/-, no reasons are given by the Appellate Court. The parties did not adduce any evidence for fixing interim compensation. He submitted that by order dated 25.8.2016, notice was issued to the respondents and the petitioners were directed to deposit compensation @ Rs.30,000/- per month from 28.8.2015 upto August, 2016 in this Court within two weeks from that date. The

defendants were as also restrained the petitioners from creating third party interest and parting with the possession of the suit premises.

5. Mr. Singh submits that in pursuance of the order dated 25.8.2016, the petitioner has deposited compensation @ Rs.30,000/- in this Court till August, 2016. The amount deposited by the petitioner shall be transmitted to the Small Causes Court forthwith and shall be invested for a suitable period in a Nationalized bank till disposal of the appeal. Mr. Singh assures that the arrears of compensation @ Rs.30,000/- per month from September, 2016 till 31.7.2018 will be deposited in the trial Court within four weeks from today under intimation in writing to the respondent's Advocate and that no extension of time will be sought in that regard. He further assures that the petitioners will go on depositing interim compensation @ Rs.30,000/- per month from August, 2018 in the trial Court under intimation in writing to the respondent's Advocate.

6. In view thereof, the impugned order is modified and substituted in terms of order dated 25.8.2016. The petitioners will deposit the arrears of compensation in the trial Court in aforesaid terms and will also go on depositing Rs.30,000/- per month in the trial Court from August, 2018 onwards during pendency of the appeal. The amount

deposited by the petitioners in this Court shall be transmitted to the Small Causes Court. The respondent is at liberty to make an application for withdrawal of the amount so deposited. If such an application is made, the learned Appellate Court will pass appropriate order thereon. If the respondent is not permitted to withdraw that amount, the amount shall be invested for a suitable period in a Nationalized bank during pendency of the appeal and while disposing of the appeal, the Appellate Court will pass order in relation to that amount. Hearing of the appeal is expedited. Rule is made absolute in aforesaid terms with no order as to

Pradipkumar
Prakashrao
Deshmane

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by Pradipkumar
Prakashrao
Deshmane
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costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)