

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9207 OF 2016

Mr. Gurucharan Singh Inder Singh
Gurudatta & Anr.

.. Petitioners

-Versus-

MR. Dixit Manubhai Patel

..Respondent

...

Mr. K. A. Dhavle for the Petitioners.

Mr. V. A. Shastry for the Respondent.

CORAM : G.S.KULKARNI, J.
DATE : 20th February 2018.

PC.

1. Heard learned counsel for the parties.
2. By an order dated 28.12.2015 passed by the learned District Judge-21, Pune, on application as filed by the Petitioners, the learned District Judge had fixed an amount of Rs.15,000/- per month to be paid by the Applicant/Appellant as an interim monthly compensation till the disposal of the appeal. The Respondent - original defendant, thereafter, had moved an application for review of the said order dated 28.12.2015. The learned District Judge exercising the powers of review under Order 47 Rule 1 of the Code of Civil Procedure, by the impugned order dated 12.04.2016 has partly allowed the Review Application, whereby the order dated 28.12.2015 passed below Exh. 5 is modified to the extent that the monthly interim compensation to be deposited by the respondent being fixed at the rate of Rs.7,000/- per month to be paid by the

Applicant/Appellant.

3. It is against these two orders, the petitioner is before this Court. After this petition was heard for some time, it appears to be quite clear that in passing both the above orders, the learned District Judge has not taken into consideration appropriate comparative material namely the leave and license Agreements and the Prevailing Fair Market Rent of the premises in the same co-operative housing society. It also appears that the reduction of the interim compensation from Rs.15,000/- to Rs.7,000/- is also not on any cogent or acceptable basis.

4. In the circumstances, it would be appropriate and in the interest of justice that the matter is remanded back to the learned District Judge to reconsider the application of the Petitioner/Appellant below Exh. 5 for fixing interim compensation in regard to the suit premises. The learned District Judge shall take into consideration the entire material which may be placed before the Court by the parties and after applying appropriate legal principles, shall decide afresh the application of the petitioner/appellant below Exh. 5 and fix the interim compensation. In the circumstances, the order dated 28.12.2015 passed on the application (below Exh. 5) and order dated 12.04.2016 passed on the Review Application (below Exh. 21) are quashed and set aside. Ordered accordingly.

5. In the intervening period, till the application of the Petitioner/Appellant below Exh. 5 is decided, it would be in the interest of justice that the Respondent/Original Defendant shall continue to deposit interim compensation at the rate of Rs.15,000/- per month from the date of the application of the Petitioner/Appellant. The arrears, if any, shall be deposited before the District Court within a period of four weeks from today. The learned District Judge shall endeavor to decide the application of the Petitioner/Appellant as early as possible and preferably within a period of two months from today. Needless to observe that whatever amount so far as has been deposited by the Respondent be adjusted so as to make it Rs.15,000/- per month till the disposal of the application.

6 The direction of this Court that the Respondent - original defendant shall deposit Rs.15000/- per month shall in no manner be construed as any observation on the merits of the said application and the learned District Judge shall decide the Exh.5 Application of the Petitioner/Appellant on its own merits. All contentions of the parties in that regard are expressly kept open.

7. Petition is disposed of in the above terms. No costs.

(G.S.KULKARNI, J)