

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.8141 OF 2018

Hindustan Petroleum Corporation Ltd.	]	
Through its Dy. General Manager/	]	
Duly constituted Attorney	]	
Rajesh Babanrao Tupkar	]	Petitioner
Vs.		
Vilas Madhavrao Paygude and others.	]	Respondents

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Mr. Vishesh Kalra i/b Vidhi Partners, for Petitioner.
Mr. D.M. Gupte, for Respondents No.1 and 3.
Mr. Dilip M. Paygude, Respondent No.2 in person present.

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CORAM : R.G. KETKAR, J.

DATE : 14TH AUGUST, 2018.

P.C:

Heard Mr. Kalra, learned Counsel for the petitioner and Mr. Gupte, learned Counsel for respondents No.1 and 3.

2. By this Petition under Article 227 of the Constitution of India, the petitioner/applicant/defendant has challenged the order dated 25th June, 2018 passed by the learned District Judge-6, Pune below Exhibit 3 in Civil Appeal No.157 of 2018. By that order, the Appellate Court allowed the application made by the defendant under Order-XLI, Rule-5 of the Code of Civil Procedure, 1908 (for short 'C.P.C') and granted stay to the eviction decree dated 29th January, 2018 passed by the learned Additional Small Causes Judge, Pune in Regular Civil Suit No.10 of 2014 subject to following conditions;

- “a. The applicant shall deposit compensation @ Rs. 2,47,500/- per month from the date of decree i.e 29.01.2018 and shall continue to deposit the same on 5th day of each calender month.
- b. Arrears of compensation shall be deposited within 3 weeks, else the application will stand automatically rejected”.

3. In support of this Petition, Mr. Kalra submitted that premises in question is reserved for petrol pump and this cannot be used for any other purpose. While fixing interim compensation, the Appellate Court has considered ready reckoner and has directed the petitioner to deposit compensation @ Rs.2,47,500/- per month from the date of the decree i.e from 29th January, 2018. He submitted that as the property in question is reserved for petrol pump, the Appellate Court was not justified in fixing interim compensation on the basis of the market rate. He invited my attention to paragraph 8 where the Appellate Court referred to prevailing market rate as per the ready reckoner @ Rs. 35,500/- square meters i.e Rs. 3300/- square feet. He submitted that as the Appellate Court has fixed exorbitant interim compensation, the same deserves to be reduced.

4. On the other hand, Mr. Gupte supported the impugned order. He submitted that respondents had let out 15000 square feet area. Out of 15000 square feet, area about 3000 square feet was acquired by local authority and petitioner is in possession of 12000 square feet. The Appellate Court has considered the market rent as per ready reckoner @ Rs. 3300/- square feet. However, it has not fixed the interim compensation at that rate. Having regard to the area about 12,000 square feet and market rent @ Rs. 3300/-, the amount comes to Rs. 3,96,00,000/-. The Appellate Court has fixed interim compensation @ Rs. 2,47,500/-. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. Mr. Gupte submitted that the respondents will file application before the Appellate Court for withdrawal of the amount deposited by the petitioner as also for disposing of the appeal in a time bound manner.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. A perusal of paragraph 8 shows that the Appellate Court referred to market rent as per ready reckoner which is Rs. 35,500/- per square meters i.e Rs. 3300/- per square feet. In paragraph 9, the learned District Judge observed that the petitioner is in possession of 12,000 square feet area. The learned District Judge, however, did not fix the interim compensation on the basis of market rent which comes to Rs. 3,96,00,000/-. The learned District Judge has fixed interim compensation @ Rs. 2,47,500/- per month which is even less than 1% of the market rent.

7. In view thereof, I do not find that the learned District Judge committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. Liberty is reserved to the respondent to take out application for withdrawal of the amount deposited by the petitioner. Mr. Kalra submitted that in pursuance of the order dated 25th July, 2018, the petitioner has deposited amount in the District Court on 8th August, 2018. In view thereof, liberty is reserved to the respondents to file application for withdrawal of the amount deposited by the petitioner in the District Court as also for disposing of the appeal in a time bound manner. If such application is made, the learned District Judge will pass appropriate order. Order accordingly.

[R.G. KETKAR, J.]