

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9184 OF 2018

Cecil Charles Brako
And Ors

...Petitioners

Versus

Surekha Hanumant Tawade
And others

...Respondents

....

Mr. Vivek Walawalkar i/b. Sameer Bhalekar, Advocate for the
Petitioners.

Ms. Parvathy K. Iyer, Advocate for Respondents No.1 to 3.

....

CORAM : R. G. KETKAR, J.

DATE : 03rd SEPTEMBER, 2018

P.C.

1. Heard Mr. Vivek Walawalkar, learned counsel for the
petitioners and Ms.Parvathy Iyer, learned counsel for respondents No.1
to 3, at length.

2. On the oral request made by Mr. Walawalkar, leave to delete
respondents No.4 & 5 is granted. Amendment shall be carried out
forthwith.

3. By this Petition under Article 227 of the Constitution of India,
the petitioners, hereinafter referred to as the 'plaintiffs No.3 to 7' have
challenged the order dated 3.7.2018 passed by the Appellate Bench of

the Small Causes Court at Bandra, Mumbai below Exhibit-8 in P.S.C.C. Appeal No.12/2018. By that order, the Appellate Court allowed the application Exhibit-8 filed by respondents No.1 to 3, hereinafter referred to as 'defendants' and stayed the eviction decree dated 30.9.2016 passed by the learned trial Judge in T.E. & R. Suit No.34/49 of 2010 subject to following conditions :

- “(a) The appellants shall deposit monthly compensation in respect of the suit premises at the rate of Rs.30,000/- (Rupees Thirty Thousand Only) per month from 30.09.2016 till June, 2018 i.e. Rs.6,30,000/- (Rupees Six lakh thirty thousand only) in equal 8 monthly installments. No further extension or installments will be granted.
- (b) The appellants continue to deposit per month compensation at the rate of Rs.30,000/- (Rupees Thirty thousand only) from July, 2018 till the final disposal of the appeal on or before 10th day of every succeeding month.
- (c) The Additional Registrar of this Court is hereby directed to invest the amount as and when deposited by the appellants in Fixed Deposit Account for initial period of one year in the Nationalized Bank on next working date and thereafter renew it from time to time.
- (d) If the appellants fails to comply the payment of compensation, stay to the execution of decree stands automatically vacated.”

4. Rule. Ms. Iyer 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.

5. In support of this Petition, Mr. Walawalkar submitted that the Appellate Court was not justified in directing respondents No.1 to 3/defendants to deposit monthly compensation @ Rs.30,000/- per month from the date of the eviction decree i.e. 30.9.2016. The Appellate Court ought to have directed the defendants to deposit monthly compensation from the date of termination of the notice i.e. 16.2.2010. In support of this contention, he relied upon following decision :

(i) **Mujibur Rehman Haji Israr Alam Siddiqui v. K.T. Kubal and Co., 2017(6) Bom.C.R. 382**

6. Mr. Walawalkar invited my attention to paragraph-16 of the impugned order and contended that the Appellate Court has not considered the material produced by the plaintiffs.

7. On the other hand, Ms. Iyer supported the impugned order and submitted that after considering the material on record, the Appellate Court has fixed the interim compensation. She also invited my attention to the rent agreement. She also relied upon the agreement relied by the plaintiffs in the plaint showing that the suit premises is agricultural land.

8. I have considered the submissions advanced by the learned

Counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order shows that the Appellate Court while fixing the quantum has observed in paragraph-16 thus :

“16. Considering the location of the suit property and the purpose for which it is used, in our opinion, it would be proper to direct the appellants to deposit the compensation @ Rs.30,000/- per month since 30.09.2016 till final disposal of the present appeal. On that condition the execution of the judgment and decree of the Ld. Trial Court can be stayed. Therefore, we answer point No.1 in the affirmative and proceed to pass the following order.”

9. A perusal of paragraph-16, extracted hereinabove, does not indicate that the Appellate Court has considered the material relied by both the parties. That apart, in view of the decision of this Court in **Mujibur Siddiqui** (supra), the Appellate Court was not justified in directing deposit of monthly compensation from the date of the decree i.e. 30.9.2016. The Appellate Court ought to have directed the defendants to deposit monthly compensation 15 days from the date of notice of termination dated 1.2.2010. In other words, the Appellate Court ought to have directed the defendants to deposit the monthly compensation w.e.f. 16.2.2010.

10. In view thereof, the impugned order cannot be sustained and the same is liable to be set aside thereby restoring application Exhibit-8

for deciding it afresh by the Appellate Court. Hence, Petition is disposed of in following terms :

- i. The impugned order is set aside.
- ii. Application Exhibit-8 is restored to the file of the Appellate Court.
- iii. The parties agree that they will appear before the Appellate Court on 15.10.2018. The Appellate Court is requested to dispose of the application Exhibit-8 within four weeks from the date of appearance of the parties.
- iv. The Appellate Court shall consider the material relied by the defendants as also the plaintiffs and shall decide application Exhibit-8 and fix the compensation from 16.2.2010 uninfluenced by the observations made in this order.
- v. Till such time the application Exhibit-8 is disposed of, the defendants will continue to deposit Rs.30,000/- per month as ordered by the impugned order. This shall be subject to the out come of application Exhibit-8.
- vi. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)