

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12317 OF 2017

Mr. Pravin B. Sutar and Another ..Petitioners

Vs.

Mr. Rajendra B. Dhawale ..Respondent

Mr. N. P. Dalvi, for the Petitioners.

Mr. Suryajeet Prithviraj Chavan i/b Ravi Girish Shinde, for
Respondent No.1.

CORAM :- B.P.COLABAWALLA, J.

DATE :- NOVEMBER 22, 2018.

P. C.:

By order passed today, Civil Application No. 2470 of 2018 was allowed and the heirs of the deceased Respondent were allowed to be brought on record. It was further ordered that the amendment shall be carried out within a period of two weeks from today. The learned counsel appearing for the deceased Respondent has stated that he also has instructions to appear for the legal heirs. It is in these circumstances that I have proceeded to hear the Writ Petition without formally waiting for bringing the legal heirs on record.

2 This Writ Petition has been filed challenging the order dated 20th July, 2017 passed below Exhibit-5 in Civil Appeal No. 281 of 2017. This Appeal was filed challenging the judgment and decree dated 6th April, 2017 in Special Civil Suit No.192 of 2011 passed by the learned Civil Judge, Senior Division, Pune. By this order, the learned Civil Judge, Senior Division, Pune passed a decree of possession against the Petitioners herein. To challenge this order dated 6th April, 2017, the Petitioners before me filed an Appeal before the District Court, Pune being Civil Appeal No. 281 of 2017. In this Appeal, the Petitioners also filed an application for stay of the decree of possession being Exhibit-5. It is in this stay application that the impugned order has been passed.

3 I have heard the learned counsel appearing on behalf of the Petitioners. He would submit that the order passed by the learned Appellate Court is wholly perverse as it gives no reasons for imposing the condition of deposit of Rs. 35,000/- p.m. for staying the execution of the decree of possession. He would submit that he himself was the person who has agreed to purchase the suit property from one Narayan Devi. However, Narayan Devi did not honour the agreement entered into with the Petitioners

and sold the suit property to the Respondent herein. He submitted that in these circumstances he was constrained to file a suit for specific performance against Narayan Devi as well as the Respondent herein. That suit came to be dismissed. The Respondent herein also filed a suit for possession claiming to be the owners of the suit property. This suit was decreed by the Trial Court and from which the Appeal being Civil Appeal No. 281 of 2017 was filed. The learned counsel submitted that the Appellate Court was wholly wrong in relying upon the decision of the Supreme Court in the case of **Atmaram Properties v/s Fedral Motors [(2005) 1 SCC 705]** and **Chandrakant Dhanu v/s Sharmila Kapur and Others [2009 (2) Mh L. J. 243]**. The learned counsel submitted that these decisions relate to the Rent Act and Commercial premises, and therefore, the principles laid down therein could not have been imported into a case like the present one. He, therefore, submitted that the order of the Appellate Court dated 20th July, 2017 passed below Exhibit-5 requires interference.

4 I have heard the learned counsel for the Petitioners at length and perused the papers and proceedings in the Writ

Petition as well as the impugned order. It is not in dispute that the Petitioners herein have suffered a decree of possession. He, however, wants to continue in possession despite a decree against him. This being the case, I do not think it would be fair if the Petitioners are allowed to continue in possession free of cost, especially once he has already suffered a decree. The Appellate Court has taken into consideration the ready reckoner value of Rs. 67,000/- p.m. as compensation. Despite this, the Appellate Court has come to the conclusion that compensation at Rs. 35,000/- p.m. would meet the ends of justice and accordingly stayed the operation and execution of the judgment and decree passed in Special Civil Suit No. 192 of 2011 on the condition that the Petitioners deposit monthly compensation of Rs. 35,000/- p.m. till the disposal of the Appeal. This deposit would be made from 1st May, 2017.

5 On going through the impugned order, I do not find that it suffers from any perversity or any error apparent on the face of the record that would require my interference under Article 227 of the Constitution of India. I find that the Appellate Court has correctly come to the conclusion that the Petitioners herein have

to be put to certain terms if they want a stay of the decree that they have suffered. I do not find that the amount of Rs. 35,000/- p.m. as ordered by the Appellate Court as compensation is in any perverse or vitiated by any error apparent on the face of the record. In these circumstances, I find no merit in this Writ Petition. It is accordingly dismissed. However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)