

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 12355 OF 2018

Anil Govind Bhole

...Petitioner

Versus

Prakash Vishwanath Surve

And others

...Respondents

....

Mr. Mahesh Londhe a/w. Netaji Gawade i/b. M/s. Sanjay Udeshi & Co.
for the Petitioner.

Mr. S.M. Sabrad, Advocate for Respondents No.1 to 5.
Respondents No.1 & 2 present in person.

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CORAM : R. G. KETKAR, J.

DATE : 01st NOVEMBER, 2018

P.C.

1. Heard Mr. Mahesh Londhe, learned counsel for the petitioner and Mr.S.M. Sabrad, learned counsel for respondents No.1 to 5, at length. Mr. Sabrad assures that within two weeks from today, he will file appearance on behalf of respondent No.3.

2. Mr.Londhe seeks leave to delete respondents No.6 and 7. Leave as prayed is granted. Amendment shall be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.1' has challenged the order dated 9.3.2018 below Exhibit-7 in (P) Appeal No.493/2016 as

also the order dated 21.9.2018 in Review Petition No.15/2018 passed by the Appellate Bench of the Small Causes Court at Mumbai.

4. By order dated 9.3.2018, the Appellate Court allowed application Exhibit-7 filed by defendant No.1 and stayed the eviction decree dated 3.9.2016 passed by the learned trial Judge in L.E. & C. Suit No.66/78 of 2008 subject to defendant No.1 depositing the compensation of Rs.36,900/- per month in the Court on or before 10th day of each month from the date of the decree till disposal of the appeal. Defendant No.1 is directed to deposit the arrears of compensation of the suit premises either in lumpsum or in three monthly installments. Upon depositing the amount, the same was ordered to be invested in a Nationalized Bank for a period of one year and thereafter for a similar period of one year each.

5. By order dated 21.9.2018, the Appellate Court dismissed Review Petition filed by defendant No.1.

6. Rule. Mr. Sabrad 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.

7. The matter was heard on 30.10.2018 and was kept today.

Mr. Sabrad states that respondents No.1 and 2 are present in the Court today. Upon taking instructions from them, he submits that the impugned orders may be modified by directing defendant No.1 to deposit the compensation @ Rs.15,000/- per month instead of Rs.36,900/- per month. He further submits that the petitioner is 69 years old and respondent No.1 is 80 years old. The Appellate Court, therefore, may be directed to dispose of the appeal in a time bound manner.

8. In view thereof, the impugned orders are modified by directing defendant No.1 to deposit compensation @ Rs.15,000/- per month in the Court on or before 10th day of each month from the date of the decree till disposal of the appeal. Defendant No.1 shall deposit the arrears of compensation @ Rs.15,000/- per month within six weeks from today. Liberty is reserved to respondents No.1 to 5 to file application for disposal of the appeal in a time bound manner. While considering that application, the Appellate Court will bear in mind that the petitioner is aged 69 years old and respondent No.1 is 80 years old. Subject to this, Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)