

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12087 OF 2019

MUKUND PANDURANG WALIMBE
VERSUS
TEJASWINI MOHANLAL GANDHI AND OTHERS

Mr.A.M.Gholap, Advocate for the petitioner.
Mr.L.B.Palod, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 01/10/2019

PER COURT :

1. The petitioner, who is the tenant in RCS No.178/2015 and is the appellant in RCA No.71/2019, is aggrieved by the interlocutory order dated 30/07/2019 passed by the Trial Court, which reads as under :-

"1. The application is allowed with cost in cause.

2. Pending hearing and final disposal of present appeal, the effect, implementation and operation of the impugned judgment and decree dated 14/12/2018 passed by the Ld.Civil Judge (J.D.) Ahmednagar in RCS No.178/2015 is stayed on following conditions :

(a) The appellant is directed to deposit monthly damages/compensation @ of Rs.2500/- in between 1st to 5th day of every English calender from the date of impugned decree

i.e. from the month of January 2019.

(b) The arrears from 01.01.2019 till today i.e. till 30.07.2019 are to be paid and cleared in weekly instalments starting from the month of August 2019 alongwith present dues as directed.

(c) In case of default in payment of monthly damages/compensation, the stay shall automatically get vacated without further reference to the Court.

[d] The hearing of the appeal is expedited.

(e) The opponents are directed to file appropriate copies of paper book."

2. The learned Advocate for the petitioner strenuously submits that since the original proceedings were pertaining to eviction of a tenant and were under the Maharashtra Rent Control Act, the moment a decree of his eviction is passed by the Trial Court, he has a right to have the appeal admitted for a hearing if it is filed within limitation. Once such an appeal is to be admitted, the impugned judgment has to be stayed, lest the entire appeal would be rendered infructuous if the tenant has been evicted from the said premises. He, therefore, contends that the Appellate Court has exceeded the jurisdiction vested in it by Law by imposing the condition to deposit monthly damages / compensation @ Rs.2,500/- from January 2019, keeping in view the date of decree being 14/12/2018.

3. The learned Advocate appearing on caveat on behalf of the original plaintiff/respondent No.1. submits that the plaintiff had conceded before the Appellate Court that an amount of Rs.2,000/- per month could be deposited by the tenant before the Appellate Court. Having been granted Rs.2,500/- p.m., he now submits that the consent stands withdrawn as the Appellate Court has, in its wisdom, passed the impugned order. He places reliance upon the judgment of the Hon'ble Apex Court in the matter of State of Maharashtra and others Vs. Super Max International Pvt.Ltd., and others [AIR 2010 SC 722], and especially the conclusions drawn by the Hon'ble Apex Court, which read as follows :-

“The second issue was answered as follows :-

With effect from that date(the passing of the decree of eviction), the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.

We are in respectful agreement with the decision of the Court in Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd [(2005) 1 SCC 705].”

4. I have considered the submissions of the learned Advocates for

the respective sides and have gone through the judgment delivered by the Hon'ble Apex Court in the case of State of Maharashtra (supra) and Atma Ram Properties (supra). I am in respectful agreement with the view taken, as the said view is binding on the parties.

5. It, however, appears from the record that the impugned order was passed recently on 30/07/2019. Respondent No.1/original plaintiff had agreed to accept an amount of Rs.2,000/-. As such, in the peculiar facts of this case, the impugned order can be slightly modified.

6. In view of the above, this petition is disposed off by modifying the impugned order only to the extent of the amount of monthly damages / compensation, which shall be @ Rs.2,000/- per month from January 2019. The direction in Clause 2(a), reproduced above, would be continued to the extent of the payment terms.

7. The learned Advocate for the petitioner submits that the amount @ Rs.2,500/- has already been deposited for the months from January to September 2019. The learned Advocate for the original plaintiff submits that the excess amount could be adjusted rather than directing a refund. The parties are agreeable.

8. The learned Advocates for the respective sides submit that the appeal paper book has already been supplied to the Appellate Court and the matter could be decided within 3 months.

9. In view of the above, the Appellate Court would endeavour to decide RCA Nos. 71/2019 as expeditiously as possible and in any case on or before 30/04/2020.

(Ravindra V.Ghuge, J.)