

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2322 OF 2012

Narnedranath Narainchandar Bag

...Petitioner

Versus

Basantidevi Goenka & Jaidayal
Kanhaiyalal Goenka Charitable Trust
and others

...Respondents

....

No papers

....

....

Mr. Arun H. Palekar, Advocate for the Petitioner.

Mr. S.M. Vyas, Advocate for Respondents No.1 to 4.

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CORAM : R. G. KETKAR, J.

DATE : 15th APRIL, 2019

ORAL JUDGMENT :

1. Not on board. At the joint request of the learned counsel appearing for the parties, taken up in the production board.
2. Heard Mr.Arun H. Palekar, learned counsel for the petitioner and Mr. S.M. Vyas, learned counsel for respondents No.1 to 4, at length.
3. This Petition takes exception to the order dated 2.12.2011 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibits-7 and 13 in Appeal No.269/2010. By that order, the Appellate Court stayed the eviction decree subject to the petitioner depositing interim compensation @ Rs.6,000/- per month in addition to

the contractual rent of Rs.80/- per month.

4. The petitioner was heard on 12.4.2012. By order dated 12.4.2012, this Court issued Rule. Rule on interim-relief was made returnable after 16 weeks and ad-interim order in terms of prayer clause (d) subject to condition that the petitioner shall deposit compensation at the rate of Rs.2,500/- per month from 23.2.2010 i.e. the date of the decree, was granted. Time to deposit the arrears was granted upto 30.6.2012.

5. Mr. Vyas, on instructions, submits that without prejudice to the rights and contentions of the respondents in the pending proceedings, the impugned order may be set aside thereby substituting the figure of Rs.6,000/- per month towards interim compensation by the figure Rs.2,500/- as fixed by this Court on 12.4.2012. He states that the R & P of R.A.E. & R. Suit No.28/43 of 2006 as also Appeal No.269/2010 may be transmitted to the Appellate Court forthwith.

6. In view thereof, by consent of parties, the petition is disposed of in the following terms :

- i. The impugned order dated 2.12.2011 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibits-7 and 13 in Appeal No.269/2010 is modified. The petitioner shall deposit compensation / mesne profits @ Rs.2,500/- per month instead of Rs.6,000/- per month as per the impugned order. Rest of the impugned order is

maintained.

- ii. Registry is directed to forthwith transmit the R & P of R.A.E. & R. Suit No.28/43 of 2006 as also Appeal No.269/2010 to the Appellate Court forthwith.
 - iii. It is made clear that present order is passed without prejudice to the rights and contentions of both the parties in the pending proceedings.
 - iv. Liberty is reserved to the parties to apply for disposal of appeal No.269/2010 in a time bound manner. If such an application is made, the learned Appellate Court will decide said application in accordance with law by keeping in mind the suit is of the year 2006 and the appeal is filed in 2010.
 - v. Rule is made absolute in aforesaid terms with no order as to costs.
7. All concerned parties, including the Appellate Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)