

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.3443 OF 2019

Shreeprasad R. Jamdar	]	Petitioner
Vs.		
Shashikalal Prabhakar Nadkarni	]	
and others.	]	Respondents

.....
Mr. Saurabh Oka, learned Counsel for the Petitioner.
Mr. A.S. Khandeparkar, learned Counsel for the Respondents.
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CORAM : R.G. KETKAR, J.

DATE : 19TH MARCH, 2019.

P.C.

Not on board. At the request of Mr. Oka, taken up in the production board.

2. Heard Mr. Oka, learned Counsel for the petitioners and Mr. Khandeparkar, learned Counsel for the respondents.

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 20th August, 2018 passed by the learned trial Judge, Court Room No.7 of the Court of Small Causes at Mumbai below Exhibit 43 in L.E. Suit No.166/204 of 2011 as also the order dated 21st February, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Revision Application No.474 of 2018. By these orders, the Courts below allowed the application Exhibit 43 made by the respondents, hereinafter referred to as 'plaintiffs' for directing defendant No.1 to deposit compensation @ Rs.30,000/- per month in respect

of Flat No.D/9 admeasuring 560 square feet situate at “Jai Model House Co-operative Housing Society Limited”, Model House 61, Vadilal A Patel Marg, (Proctor Road), Mumbai 400 004 (for short 'suit premises”) from the date of death of Gopal i.e from 16th July, 2010 or from the filing of the present suit till disposal of the suit. The Courts below directed defendant No.1 to deposit arrears of compensation in the Court @ Rs.30,000/- per month from the date of filing of the suit i.e from 23rd November, 2011 till October, 2018 within two months from the date of the order. Defendant No.1 is further directed to deposit future compensation @ Rs.30,000/- per month on or before 10th day of each succeeding month commencing from November, 2018 till disposal of the suit.

4. Rule. Ms. Joshi waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

5. In support of this Petition, Mr. Oka has strenuously contended that the Courts below committed serious error in directing defendant No.1 to deposit compensation @ Rs.30,000/- per month. He submitted that the plaintiffs came with the case that defendant No.1 is a gratuitous licensee. In other words, according to the plaintiffs, defendant No.1 is occupying the suit premises without payment of any licence fee, charges or compensation. Order-XV-A of the C.P.C does not deal with compensation. Order-XV-A contemplates payment of either rent or licence fee. In the instant case, admittedly no rent or licence fee is fixed. Payment of compensation is not covered by Order-XV-A. The Courts below were not justified in fixing compensation @ Rs.30,000/- per month. In support of this submission, he invited my attention to Order-XV-A of the C.P.C.

6. Mr. Oka further submitted that earlier the plaintiff had made application Exhibit 7 on 23rd November, 2011. The plaintiffs prayed for direction to defendant No.1 to deposit compensation @ Rs.30,000/- per month. However, the plaintiffs did not press for deposit of compensation at the time of hearing of Exhibit 7. By order dated 5th May, 2016, the learned trial Judge partly allowed the application and issued injunction restraining the defendants from creating any third party interest or inducting any person in the suit premises. He, therefore, submitted that the Courts below were not justified in directing defendant No.1 to deposit compensation from the date of filing of the suit. He submitted that the Petition requires consideration.

7. On the other hand, Mr. Khandeparkar supported the impugned orders. He submitted that a fair reading of Order-XV-A does not indicate that there has to be fixation of either rent or licence fee for issuing direction under Order-XV-A. Order-XV-A empowers the Court to direct the defendant to deposit such amount as the Court may direct on account of arrears up to date of the order. In other words, he submitted that Order-XV-A empowers the Court to pass appropriate order directing the defendant to deposit amount which may not be towards rent or licence fee but as and by way of compensation for occupying the premises. He further submitted that in the order dated 5th May, 2016, the learned trial Judge recorded that the plaintiffs are not pressing relief of deposit of compensation at that stage. In other words, the plaintiffs did not give up their claim for compensation. The plaintiffs accordingly filed present application Exhibit 43 on 10th July, 2017. The Courts below were, therefore, fully justified in passing the impugned orders. He submitted that no case is made out for interfering the impugned orders.

8. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Order-XV-A

of the C.P.C reads thus;

- “(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future *mesne profits* from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence]

- (2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause s to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.
- (3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of pre-judging the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.

Explanation._ The suit for eviction shall include suit for mandatory injunction seeking removal of licence from the premises for the purpose of this rule.]

A perusal of Order-XV-A extracted hereinabove shows that the Court is empowered to issue direction to the defendant to deposit such amount as the Court may direct on account of arrears up to the date of the order. It is not in dispute that defendant No.1 is occupying the suit premises. Defendant No.1 claims that he has paid Rs.26,00,000/- in cash to original owner Gopal

Shirgaonkar who agreed to sell the suit premises to them. Defendants have also filed suit for specific performance and the same suit is pending. I need not go into this aspect as the suit for specific performance is pending. Any observations made herein will influence the learned trial Judge seized of the suit. At this stage, it is sufficient to note that the defendants are occupying the suit premises. In view thereof, the Court has power to issue direction to defendant No.1 to deposit such amount as it finds reasonable for occupying the suit premises. The Courts below have noted that the plaintiffs have brought instances by way of Exhibit 47. The Courts below noted that the suit premises is situate in South Mumbai and the area of the suit premises is 560 square feet. The rent for 560 square feet is shown Rs.50,400/-, and Rs.67,200/-. The defendants have not filed any chart of rent for determination of compensation amount. After considering the material on record, the Courts below have directed defendant No.1 to deposit arrears of compensation @ Rs.30,000/- per month from the date of filing of the suit i.e from 23rd November, 2011 till October, 2018.

9. As mentioned earlier, the plaintiffs had filed application Exhibit 7 on 23rd November, 2011. Prayer clause (c) of that application reads thus;

“Pending the hearing and final disposal of the suit, Defendant be ordered to deposit the compensation @ Rs.30,000/- per month either in this Hon'ble Court or deposit the same with the Court Receiver, High Court, Bombay in respect of the suit premises situated at Flat No.D/9, Jain Model House Co-operative Hsg. Soc. Ltd., Model House 61, Vadilal A. Patel Marg (Proctor Road), Mumbai – 400 004”.

A perusal of the order dated 5th May, 2016 shows that at that stage, the plaintiffs did not press prayer clause (b) dealing with appointment of Court Receiver as also prayer clause (c) for deposit of compensation. Application Exhibit 43 is made on 10th July, 2017.

10. In view thereof, the Courts below were not justified in directing defendant No.1 to deposit arrears of compensation from the date of filing of the suit i.e from 23rd November, 2011. The Courts below ought to have directed defendant No.1 to deposit compensation @ Rs.30,000/- from the date of the application i.e from 10th July, 2017 by reserving liberty to the plaintiffs to agitate this contention at the time of disposal of the suit. Mr. Khandeparkar submitted that the plaintiffs are not desirous to withdraw the amount so deposited by defendant No.1. On instructions, he states that as on 31st March, 2019, amount of Rs.7,30,000/- approximately is due towards society maintenance charges.

11. In view thereof, the Petition partly succeeds. Application Exhibit 43 is partly allowed. Defendant No.1 is directed to deposit arrears of compensation in the Small Causes Court at Mumbai @ Rs.30,000/- per month from the date of the application i.e from 10th July, 2017 till October, 2018 within three months from today. Defendant No.1 will go on depositing future compensation @ Rs.30,000/- on or before 10th day of each succeeding month from November 2018 till disposal of the suit. Out of amount so deposited, an amount of Rs.7,30,000/- shall be transmitted by the Small Causes Court directly in the account of “Jai Model House Co-operative Housing Society Limited” . The plaintiffs are at liberty to agitate claim of compensation from the date of the suit and the same shall be dealt with by the trial Court while deciding the suit. Rule is partly made absolute in the aforesaid terms with no order as to costs. Liberty is reserved to the parties to apply for disposal of the suit in a time bound manner. If such application is made, the learned trial Judge shall pass appropriate order keeping in mind that plaintiff No.1 is 90 years old as on date.

12. All the parties including the trial Court to act upon the authenticated copy of this order.

[R.G. KETKAR, J.]