

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 731 OF 2019
IN
APPEAL FROM ORDER NO. 642 OF 2019**

M/s.Carona Ltd .. Applicant

In the matter between

M/s.Carona Ltd .. Appellant

Vs.

Mrs.Perviz Jamshed Alexander and ors. .. Respondents

Mr.Dinesh Kumar Seth I/b Mr.Mehul A.Rathod, for the
Applicant.

Mr. Prem S.Gidwani, for the Respondents No. 1 & 2.

CORAM : M.S.KARNIK, J.

DATE : 16th JULY, 2019

P.C. :

. Heard learned Counsel for the parties. Learned
Counsel for the applicant would contend that the learned trial
Judge was not justified in rejecting the Notice of Motion taken
out for discharging the Court Receiver and for modifying the

earlier order directing the applicant to pay royalty as now the applicant is not liable to pay compensation. Learned Counsel for the applicant would submit that the Suit came to be filed by the applicant before the Small Causes Court for declaring the applicant as a tenant. Subsequently, in 2001 even the respondents filed the Suit before this Court for possession which later on was transferred to the City Civil Court, Mumbai. The Suit which was filed by the applicant before the Small Causes Court came to be dismissed. In this view of the matter, this Court by order dated 30/09/2002 in the Suit No. 611 of 2001 filed by the respondent directed the appointment of the Receiver. Further, the applicant was appointed as an agent of the Court Receiver. By order dated 07/07/2004, this Court fixed the compensation as Rs.50,000/- per month to be payable by the appellant. Out of this amount of Rs.50,000/-, respondents are permitted to withdraw Rs.15,000/- per month and balance is deposited with the Court Receiver.

2. Learned Counsel for the applicant would submit that

thereafter the Suit which was filed by the applicant before the Small Causes Court which was dismissed came to be restored. Pursuant thereto application was made for staying the Suit filed by the respondents which is now tried before the City Civil Court. The Suit of the respondents has been stayed by virtue of Section 10 of the Code of Civil Procedure, 1908 as the Suit filed by the applicant was prior in point of time. The Suit filed by the applicant before the Small Causes Court is now at the stage of evidence.

3. Be that as it may, it is submitted by the learned Counsel for the applicant that the trial Court Judge was not justified in rejecting the Notice of Motion as the Suit filed by the applicant has been restored and therefore the parties should be restored to their original status. According to him, this Court appointed Court Receiver and called upon the applicant to pay compensation only because Suit filed by the applicant was dismissed by the Small Causes Court. Now that Suit is restored, learned Counsel would submit that the Court Receiver should be

discharged and even the applicant need not pay royalty amount.

4. The premises in question which admeasures 800 sq.ft is situated in Colaba and is in occupation of the applicant where the applicant is conducting business. The royalty amount of Rs.50,000/- is fixed as far back as in 2004. Even the Suit filed by the respondents for possession is stayed at the instance of the appellant. The Suit filed by the applicant before the Small Causes Court is at the stage of evidence.

5. In this view of the matter, I do not see this is a fit case for granting any interim relief during the pendency of this Appeal. The Civil Application for grant of interim relief is rejected.

(M.S.KARNIK, J.)