

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION [STAMP] NO.22826 OF 2018
IN
WRIT PETITION NO.1642 OF 2004

M.K. Jagasia	]	Applicant
Vs.		
Jagjit Singh Paul and another.	]	Respondents

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Mr. Nikhil Dongre i/b S.S. Kanetkar, Advocate for Applicant.
Ms. Zulekha Sayed, Advocate for Opponents.

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CORAM : R.G. KETKAR, J.

DATE : 2nd MAY, 2019.

P.C.

Heard Mr. Dongre, learned Counsel for the applicants and Ms. Sayed, learned Counsel for the opponents.

2. By this application, the applicant/Org. Respondent No.2 in W.P. No.1642 of 2004 has prayed for vacating interim order dated 20th July, 2004 passed by this Court in Writ Petition; directing respondent No.1 and 2/original petitioners to hand over quiet, peaceful and vacant possession of the flat consisting of spacious hall, two bed rooms along with W.C., bathroom, Kitchen, balcony along with open space open to sky situate at 1st floor of Plot No.147, Sindhi Immigrants Co-operative Housing Society Ltd (for short 'suit premises'); in the alternate direction to respondents No.1 and 2/original petitioners to deposit monthly compensation @ Rs.85,000/- per month in respect of use and enjoyment of the suit premises.

3. Mr. Dongre has invited my attention to the order dated 5th October, 2018. In that order, submissions of Mr. Kanetkar that the opponents have deposited compensation @ Rs.45,000/- per month upto July, 2017 and thereafter have been depositing @ Rs.31,000/- per month was noted. It was observed that the opponents are not depositing Rs.45,000/- per month and thus are not complying the order dated 14th July, 2015. As none appeared on behalf of respondents No.1 and 2/Original petitioners, by way of indulgence hearing of application was deferred till 19th October, 2018. It was made clear that if on the next date of hearing, none appears for respondents No.1 and 2/original petitioners, the Court will consider vacating the interim order. Assurance of Mr. Kanetkar that he will serve copy of the order on Ms. Zulekha Sayed and Mr. Brijesh K. Upadhyaya as also on the original petitioners, was noted.

4. Civil Application was heard on 9th April, 2019. In the order dated 9th April, 2019, submission of Mr. Kanetkar that he has served copy of the order dated 5th October, 2018 on Ms. Zulekha Sayed as also he has served copy of the order dated 5th October, 2018 on the daughter-in-law of respondent No.2 i.e Manju Vikram Paul was also noted. As none appeared even on 9th April, 2019, C.A. was adjourned to 24th April, 2019 at 3.00 p.m in the supplementary board under the caption 'for orders'. Assurance of Mr. Kanetkar that he will intimate the next date of hearing in the matter and will serve copy of this order on the opponents as also their Advocates by R.P.A.D was noted. It was made clear that despite service if the opponents do not appear, the Court will consider vacating interim order dated 20th July, 2004 on account of non compliance of the order dated 14th July, 2015.

5. The matter was heard from time to time so as to enable Ms. Sayed to take instructions as to whether the opponents who are the original

petitioners are regularly depositing compensation @ Rs.45,000/- per month. Upon taking instructions from Manju Vikram Paul, who is daughter-in-law of opponent No.2 Ravindra Kumar Paul, she states that up to July, 2017, the opponents have deposited compensation @ Rs.45,000/- and thereafter, they have been depositing Rs.31,000/- per month. Upon taking further instructions from Manju Paul, she states that Ms. Manju Paul is in exclusive possession of the suit premises and she is not in a position to deposit compensation @ Rs.45,000/- per month. She has also been explained consequences of vacation of the interim order dated 14th July, 2015 and she acknowledged that she understood the consequences of vacation of interim order. Ms. Sayed has tendered photo copy of her 'Aadhar Card' which is taken on record and marked 'X' for identification.

6. A perusal of the order dated 14th July, 2015 shows that this Court (Coram:M.S. Sonak, J.) directed the opponents/petitioners to deposit compensation @ Rs.45,000/- per month from 1st July, 2014. Opponents took out C.A. No.3068 of 2015 for recalling that order. By order dated 29th September, 2017, the application was dismissed for non prosecution. The opponents, therefore, took out Civil Application No.2020 of 2016 for restoration of Civil Application No.3068 of 2015. This Court adjourned hearing to 8th March, 2017 and directed the opponents to clear all arrears as per the order dated 14th July, 2015. Civil Application No.2020 of 2016 was thereafter heard on 27th April, 2017 and as and by way of final indulgence, time up to 15th June, 2017 is granted to deposit the said arrears of compensation of Rs.1,68,000/-. It was made clear that in case, the amount is not deposited, this Court would be constrained to pass appropriate orders including one of vacating the stay.

7. By order dated 29th September, 2017, C.A. No.3068 of 2015 was dismissed by this Court for non prosecution.

8. Thus, it is clear that though the opponents are required to deposit compensation @ Rs.45,000/- per month from 1st July, 2014, they deposited compensation @ Rs.45,000/- per month upto July, 2017 and thereafter they have been depositing compensation @ Rs.31,000/- per month. Despite giving several opportunities to the opponents to clear arrears @ Rs.45,000/- per month from August, 2017 onwards, the opponents are not ready and willing to clear the arrears. Manju Vikram Paul, who is daughter-in-law of opponent No.2 Ravindra Kumar Paul made it clear that she is not in a position to deposit compensation @ Rs.45,000/- per month as per the order dated 14th July, 2015. She also understood the consequences of non compliance of that order.

9. In the result, C.A. is allowed in terms of prayer clause (a) with no order as to costs. Interim order dated 20th July, 2004 is vacated.

[R.G. KETKAR, J.]