

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13976 OF 2018

Shri. Banwarilal Ramdev Goenka	...Petitioner
<i>Versus</i>	
Shri. Ganapati Dnyanoba Pawar	...Respondent

....

Mr. Amit B. Borkar, Advocate for the Petitioner.
Mr. N.J. Patil, i/b. Amey N. Patil, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 04th FEBRUARY, 2019

P.C.

1. Heard Mr.Amit Borkar, learned counsel for the petitioner and Mr. N.J. Patil, learned counsel for the respondent, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 17.11.2018 passed by the learned District Judge-1, Ichalkaranji below Exhibit-5 in Regular Civil Appeal No.46/2016. By that order, the learned District Judge stayed the eviction decree dated 5.7.2016 passed by the learned trial Judge in R.C.S. No.132/2007 subject to following conditions :

- “(a) Appellant shall pay Rs.6,000/- per month charges for the use and occupation from 01/08/2016 till the pendency of the appeal.
- (b) The amount of Rs.1,62,000/- from 01/08/2016 to 31/10/2018 be deposited on or before 01/12/2018 and subsequent monthly charges shall be paid on or before 10th day of every month, till the pendency of appeal.”

3. Rule. Mr. Patil waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing

4. Mr. Borkar invited my attention to paragraph-7 of the impugned order. In paragraph-7, the learned District Judge observed thus :

“.....considering the area and the location of the suit flat, I am inclined to grant Rs.6,000/- per month charges for the use and occupation.”

5. In short, Mr. Borkar submitted that without any material on record, the learned District Judge has fixed the compensation. He relied upon the decision of Apex Court in **Niyas Ahmad Khan Vs. Mahmood Rahmat Ullah Khan and another, (2008) 7 SCC 539** and in particular paragraph-7 thereof. He submitted that while fixing the interim compensation, the Court has to consider the relevant circumstances like the market value of the building on the date of letting, prevailing rentals in the locality as on the date of letting, the size or situation or amenities, age of construction, latest assessment of the building or other circumstances.

6. Mr. Borkar submitted that by order dated 14.12.2018, this Court issued notice to the respondent and till next date granted stay

subject to the petitioner depositing Rs.6,000/- per month from 1.8.2018 till pendency of the appeal and continuing to deposit said amount before the Appellate Court. He submitted that the petitioner is complying said order.

7. On the other hand, Mr. Patil supported the impugned order. He submitted that while decreeing the suit, the learned trial Judge in paragraph-48 dealt with the plaintiff's prayer for recovery of Rs.1,42,400/- and mesne profits. The learned trial Judge noted that the plaintiff is claiming Rs.5,600/- per month towards the unauthorized use of the suit property for the period 1.8.2006 to 31.3.2007. The learned trial Judge, therefore, held that the plaintiff is entitled to Rs.5,600/- per month towards unauthorized use of the suit property. The learned trial Judge while decreeing the suit has, therefore, directed the defendant to pay Rs.5,600/- per month for the unauthorized use of the suit property during the period 1.8.2006 to 31.3.2007. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the learned District Judge has fixed the interim compensation of Rs.6,000/- per month by only observing that considering the area and the location of the suit flat, he was inclined to

grant Rs.6,000/- per month as charges for the use and occupation of the suit property.

9. In my opinion, the learned District Judge has not given any reasons for fixing the compensation. The learned District Judge also did not consider relevant circumstances which are required to be taken into consideration while fixing the interim compensation. On this short count alone, the impugned order is liable to be set aside and the application Exhibit-5 deserves to be restored to the file of the learned District Judge.

10. In view thereof, the impugned order is set aside and application Exhibit-5 is restored to the file of the learned District Judge. The parties will be at liberty to adduce material for fixing interim compensation during pendency of the appeal. Till such time, the application Exhibit-5 is decided, the petitioner shall go on depositing Rs.6,000/- per month as per the impugned order before the Appellate Court. All contentions of the parties on merits are expressly kept open.

11. The learned District Judge is requested to dispose of the application Exhibit-5 within eight weeks from production of the authenticated copy of this order. Till such time, subject to compliance of the order dated 14.12.2018, the eviction decree shall not be executed. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)