

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13917 OF 2016

Parshuram Vishnu Sagvekar ...Petitioner

Versus

M/s. K. R. Shoppers Pvt. Ltd. & Ors. ...Respondents

Vijay S. Gharat - Advocate for the petitioner.

R. R. Sharma – Advocate for the respondent-1.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 17th SEPTEMBER 2019.

P.C. :

The petitioner is a tenant; he claims to have been in possession of a piece of open land from 1932, by paying Rs.50/- per month as rent. In the course of time, though the owners changed, the tenant remained constant and continued the lease. Then, the present owner filed T. E. & R. Suit No. 64 of 2007 and secured a decree in 2010. That was a decree for eviction. Aggrieved, the tenant filed Appeal No. 29 of 2011, before the Appellate Bench of the Small Cause Court. The appeal is still pending.

2. In the appeal, the petitioner filed Exh.8 to have the decree stayed. Then the Appellate Bench passed Exh. 'H' order, dated 18th April 2015. After appreciating the rival contentions, it has stayed the impugned decree subject to the tenant's

depositing Rs. 5,000/- per month as compensation. It is from the date of decree till the disposal of the appeal. Besides that, the petitioner was directed to pay the arrears of compensation @ Rs. 5,000/- per month.

3. Later, the petitioner applied for having that order modified. Then, the Appellate Bench, through its order dated 19.11.2016, refused to modify the order. Under these circumstances, the petitioner-tenant has filed this Writ Petition.

4. Shri Vijay S. Gharat, the learned counsel for the petitioner, has strenuously contended that the property is admittedly a piece of open land. So, in terms of Section 7 (9) of the Maharashtra Rent Control Act, the Small Cause Court could not have entertained the suit vis-à-vis a piece of open land. In other words, as Section 7(9) of the Act defines premises, open land does not fall under that category. Thus, the decree the trial Court passed is void. In that context, the learned counsel asserts that the conditional order cannot be sustained and needs to be set aside.

5. On the other hand, the respondent's counsel stresses that the tenant's challenge is not against the first interim order; instead, it is against the second order, which has refused to modify the first order. According to him, the first order has already attained finality. He also contends that the tenant's contentions cannot be entertained even on merits.

6. Heard the learned counsel for the petitioner and the

learned counsel for the respondent.

7. At the outset, I clarify that I do not intend to examine the merits of the matter. Admittedly, the tenant has suffered a decree and filed an appeal. In that appeal, the tenant wanted the Appellate Bench to stay the decree. Then, the Appellate Bench invoked Order 41 Rule 5 of CPC and passed the impugned conditional order. And it is a discretionary order. It is well established that unless the discretion exercised by the Courts below suffered from the vice of arbitrariness or perversity, it is not within this Court's provenance to substitute its view in the name of exercising its supervisory jurisdiction under Article 227. The operative portion of the order reads as follows:

“ORDER

- 1) Application is hereby allowed with no order as to costs.
- 2) The execution of the impugned judgment and order dated 16/10/2010 passed by the trial Court in T.E. & R. Suit No. 64 of 2007 is hereby stayed till final disposal of the present appeal.
- 3) The appellant shall deposit in the court compensation at the rate of Rs. 5,000/- (Rs. Five Thousand only) per month since the date of decree till the final disposal of the present appeal.
- 4) The appellant shall deposit in the court arrears of compensation at the rate of Rs. 5,000/- (Rs. Five Thousand only) per month since the date of decree till April, 2015 within one month from the date of this order and further go on depositing the regular monthly compensation on or before 15th day of each month.
- 5) The respondent No. 1 is permitted to withdraw amount

of Rs. 50/- (Rs. Fifty only) per month equivalent to the monthly rent of the suit premises out of the monthly compensation deposited by the appellate in the court.”

8. I reckon the Appellate Bench has well appreciated the rival contentions and imposed what seems to be an equitable condition. First, the property was leased out in 1932; the rent was Rs.50/- and continues to be Rs.50/-, as I gather. Yet, given the present market conditions, the Appellate Bench has considered the Supreme Court’s dictum in *Atmaram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, (2005)1 SCC 705, and required the tenant to deposit Rs.5,000/- per month as compensation. Also it has put fetters on the owner’s right to withdraw the compensation in full. It, in fact, allowed the owner to withdraw only Rs.50/- per month, that being the admitted rent.

9. About the trial Court’s lack of jurisdiction, I am afraid it is premature for this Court to look into that assertion. At any rate, the tenant suffered a decree, and that decree, as a judicial declaration, carries a presumption of correctness until it is upset by a competent appellate or revisional forum. That is, a validly rendered order or judgment continues to hold the filed until it is set aside. To make the right of appeal realistic, the appellate courts usually suspend the decree until the appeal is disposed of, as has been statutorily permitted, for example, under Order 41, Rule 5 of CPC. But that suspension is not for mere asking; it must be, as is the practice, on terms. And the terms imposed by

the Appellate Bench are just and equitable.

10. So I refuse to interfere with the order impugned. As a result, I dismiss this Writ Petition as meritless.

I, therefore, dismiss the Writ Petition.

[DAMA SESHADRI NAIDU, J.]