

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3597 OF 2016
IN
FIRST APPEAL NO. 1363 OF 2016

Satish S. Mule Applicant
VERSUS
Suresh S. Mule & Ors. Respondents

Mr.Girish Godbole, a/w. Mr.Ashok B. Tajane for the Applicant.

Mr.Gauraj Shah, a/w. Mr.A.N.D'Silva for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 26th FEBRUARY, 2020

P.C.

First Appeal No. 1363 of 2016 is already admitted by this court. By this civil application, the applicant (original appellant) seeks stay of the judgment and decree passed by the City Civil Court on 18th June, 2016 in S.C. Suit No. 251 of 2009 thereby directing the appellant to handover possession of the suit premises to the original plaintiff.

2. Heard learned counsel for the applicant and the original plaintiffs.

3. By an order dated 18th January,2017 passed by this court, this court had already granted *ad-interim* relief restraining the execution of the impugned decree subject to the applicant depositing in this court the compensation at the rate of Rs.10,000/- per month from 1st July, 2016 till 28th February,2017. By an order dated 16th March,2017 this court directed the Registry of this court to accept the payment made by the applicant without prejudice to the rights and contentions of all parties.

4. By an order dated 13th January,2020, passed by this court in Civil Application No.2883 of 2017, this court has permitted the original plaintiff to withdraw the amount of compensation deposited so far by the appellant subject to furnishing an undertaking that in the event of appeal being allowed, the amount so withdrawn with accrued interest by the plaintiff would be returned with prevailing rate of interest to the applicant forthwith.

5. Mr.Shah, learned counsel for the original plaintiff states that in the bank account the correct name of the plaintiff is disclosed as Ziaul Haq Zainul Haq Shaikh and thus the Registry of this court be directed to permit the plaintiff to withdraw the said amount in the name of Ziaul Haq Zainul Haq Shaikh in whose name the bank account is being operated. He submits that the said Ziaul Haq Zainul Haq Shaikh and the plaintiff is the one and the same person. Statement is accepted.

6. After hearing the learned counsel for the parties at length, I am of the view that the valuation report submitted by the plaintiff for consideration of this court indicates that the fair rent/compensation in respect of the suit premises would be more than Rs.25,000/-. In my view, the interest of justice would be met with if the amount of Rs.10,000/- fixed by this court by the earlier *ad-interim* orders is enhanced to Rs.15,000/- from the date of decree till payment. I therefore, modify the said order to the extent of enhancement of the amount of Rs.10,000/- to Rs.15,000/- per month from the date of decree till disposal of the appeal.

7. The applicant is directed to pay the differential amount from the date of decree till the month of February 2020 at the rate of Rs.15,000/- per month within two months from today with the Registry of this

court after adjusting the amount already deposited at the rate of Rs.10,000/- per month. The applicant shall inform the original plaintiff the factum of such deposit within one week from the date of such deposit.

8. The original plaintiff is permitted to withdraw the entire amount that is already deposited and would be deposited by the applicant on filing an undertaking in compliance with the order dated 13th January,2020 passed by this court. Such undertaking shall be filed within two weeks from the date of communication of the factum of the deposit by the applicant to the original plaintiff. A copy of such undertaking shall be served upon the applicant's advocate within one week from the date of filing such undertaking.

9. Insofar as the future compensation i.e. for the month of March onwards till the date of pendency of the first appeal is concerned, such amount shall be deposited on or before 10th of each month in advance. Such amount that would be deposited also would be allowed to be withdrawn by the plaintiff in the name of Ziaul Haq Zainul Haq Shaikh on similar terms.

10. Civil application is disposed of on the aforesaid terms. No order as to costs.

11. *Ad-interim* relief granted by this court to continue during the pendency of the First Appeal in the terms of the order 18th January 2017, 16th March,2017, 13th January 2020 and this order.

[R.D.DHANUKA, J.]