

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3188 OF 2019
IN
FIRST APPEAL NO.1318 OF 2019

Raghunath Sakpal, since deceased
through His L.Rs. - Sarita R. Sakpal
V/s.

...Applicant

Galaxy Fabrics Ltd. & Anr.

...Respondents

Mr.P.G. Lad with Ms.Aparna Kolashil and Ms.Sayli Apte for the
Applicant.

Mr.Mohankumar K. Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 7TH JANUARY, 2020.

P.C. :-

1. By a separate order passed by this Court in the first appeal filed by the applicant, the first appeal has been admitted. The applicant seeks stay of the impugned judgment and order dated 7th June, 2019. The Trial Court has declared the applicant as trespasser in respect of the suit premises. The applicant has deposited certain amounts in this Court pursuant to the interim order passed by this Court from time to time. The respondent no.1 has not withdrawn any such amount deposited till date though it succeeded in the suit filed by the respondent no.1 before the Trial Court.

2. Learned counsel for the respondent no.1 invited my attention to the valuation report obtained by the Court Receiver dated

16th September, 2008 in respect of the suit property opining that the charges for the suit premises shall be Rs.13,200/- per month. Learned counsel for the respondent no.1 submits that the said report was obtained in the month of September, 2008. The applicant thus shall be directed to pay at least Rs.20,000/- per month if this Court is inclined to continue the stay order passed by this Court.

3. Mr.Lad, learned counsel appearing for the applicant on the other hand submits that the amount deposited so far by the applicant was at the rate of Rs.3,000/- per month and if this Court enhances such amount proportionately for extending stay of the impugned judgment and order passed by the Trial Court, the same shall be reasonable amount.

4. It is not in dispute that the Trial Court has passed a decree against the applicant and has held that the applicant was a trespasser. The applicant has not filed any separate proceedings for asserting her alleged rights, if any, in the suit property.

5. Interest of justice would be met with if the applicant is appointed as an agent of the Court Receiver in respect of the suit premises on payment of royalty to be determined by the Court Receiver after obtaining a fresh valuation report of the suit property. The valuation charges shall be paid at the first instance by the applicant. The Court Receiver shall fix the royalty amount after considering the valuation report and after hearing both the parties.

The applicant shall be liable to pay the royalty amount that would be determined by the Court Receiver. The Court Receiver is directed to decide the royalty amount within three months from today. The applicant in the meanwhile is directed to deposit an amount of Rs.3,000/- per month in this Court till the issue of royalty is decided by the Court Receiver without fail. It is made clear that the Court Receiver shall decide the amount of royalty from the date of decree and judgment of the Trial Court.

6. The respondent no.1 shall be at liberty to withdraw the entire amount deposited by the applicant in this Court on filing an undertaking before this Court to the effect that if the appellant succeeds in the first appeal, the respondent no.1 would return the entire amount with interest at such rate this Court may direct. The Registry shall permit the respondent no.1 to withdraw the amount deposited by the applicant till date and further amount that would be deposited by the applicant within one week from the date of the respondent no.1 filing an undertaking. A copy of the undertaking shall be served upon the applicant's advocate simultaneously.

7. The civil application is made absolute in terms of prayer clause (a) with the aforesaid conditions.

8. It is made clear that if the applicant commits any default in making payment of Rs.3,000/- per month till the issue of royalty is decided by the Court Receiver and thereafter the payment of royalty

as may be decided by the Court Receiver, interim order passed by this Court to stand vacated without further reference to the Court.

9. All parties as well as the Court Receiver to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)