

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2883 OF 2017
IN
FIRST APPEAL NO. 1363 OF 2016

Mrs.Ziaul Haq Zainul Haq ...Applicant

IN THE MATTER BETWEEN

Mr.Satish Shankar Mule ...Appellant

Versus

Mr.Suresh Shankar Mule & Ors. ...Respondents

.....
Mr.Gauraj Shah i/b. Mr.A.N.D'silva for the Applicant.
Mr.Ashok B.Tajane for the Original Appellant.
.....

CORAM: V.G.BISHT, J.
DATE: 13TH JANUARY, 2020

PC:-

1. Perused affidavit in reply on behalf of the original appellant, rejoinder and sur-rejoinder.
2. The present appeal impugns the judgment and order dated 18th June, 2016 passed by learned Ad-hoc Judge, City Civil Court, Gr. Bombay in Short Cause Suit No. 251 of 2009 thereby directing the present original appellant and others to handover the possession of the suit premises to the plaintiff i.e., applicant/

respondent herein within three months from the date of passing of the order.

3. This Court (Coram: M.S.Sonak. J.) in Civil Application No. 3597 of 2016 vide order dated 18th January, 2017 granted ad-interim relief restraining the execution of the said judgment and decree subject to the appellant depositing compensation at the rate of Rs. 10,000/- p.m. effective from 1st July, 2016 till 28th February, 2017. It appears from the record that pursuant to this order, the appellant is depositing compensation at the rate of Rs.10,000/-.

4. Mr.Gauraj Shah, learned Counsel for the applicant/respondent, submitted that the appellant has been wrongly and illegally occupying the suit premises and carrying out full fledged business. Since the trial Court has decreed the suit and declared that the appellant has no right, title and interest in the suit premises, he ought to have vacated the suit premises. Since the applicant/ respondent has been deprived of her valuable right and the fact that pursuant to the direction of this Court, the appellant is depositing monthly compensation, the compensation amount

deposited so far be allowed to be withdrawn by her. He placed reliance on the judgment of the Supreme Court in the case of ***Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.*** reported in ***2005 (58) ALR 650***. He also placed reliance on the judgment of this Court in the case of ***Chandrakant Dhanu and Ors. Vs. Sharmila Kapur and Ors.*** reported in ***2009 (1) Bom CR698***.

5. Mr.A.B.Tajane, learned Counsel for the appellant, on the other hand, opposed the submission by contending that the dispute regarding tenancy is still pending before the Small Causes Court and the fact that the present applicant/ respondent is not a tenant and in such circumstances, no permission be given to withdraw the amount deposited by the appellant. He placed reliance on the judgment of the Supreme Court in the case of ***State of Maharashtra and Anr. Versus M/s. Super Max International Pvt. Ltd. & Ors.*** an reported in ***(2009) 9 SCC 772***.

6. Heard learned Counsel for both the parties.

7. In the case of *M/s. Super Max International Pvt. Ltd. (supra)*, it has been held by the Hon'ble Apex Court that, ordinarily deposited amount should not be directed to be paid to the landlord during the pendency of the appeal/revision and the amount should only be paid after the final disposal depending upon the result of the case. It has been further held by the Hon'ble Apex Court that, where Court finds amount fixed should go to the landlord while the matter is pending, Court must be careful to direct payment to the landlord on terms.

8. In *Atma Ram Properties (P) Ltd. (supra)*, the Supreme Court made following observations in paragraph No. 18 :

“18. That apart, it is to be noted that the appellate Court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the tenant- appellant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate Court. While ordering stay the appellate Court has to be alive to that fact that it is depriving the successful landlord of the fruits of the decree and it postponing the execution of the order for eviction. There is every justification for the appellate Court to put the tenant- appellant on terms and direct the appellant to compensate the landlord by payment of

a reasonable amount which is not necessarily the same as the contractual rate of rent”.

9. In the case of ***Chandrakant Dhanu and Ors.*** (*supra*), this Court made following observations in paragraph No. 13 :

“13. This, therefore, applicable even to all the disputes between the owner/ landlord/ licensor and the tenant/ licensee/ trespasser / obstructionist. It covers residential or non residential/ Commercial premises. The Court requires the applicant to give security also for the performance of the decree for possession passed against him. Therefore, there is an ample power given to the Court to pass appropriate order or direction while granting stay of execution of eviction decree for possession in respect of premises governed by the Rent Control legislation and or even otherwise”.

10. What is pertinent to note is that the above cited judgments were essentially in between the landlords and tenants under the relevant Rent Control Acts.

11. In the case at hand, it has to be borne in mind that parties to the proceedings are not in the character of landlord and tenant. The applicant/ respondent herein had filed suit for possession claiming herself to be tenant of the suit premises and that the appellant herein was a servant helping him in his business of

tailoring. The appellant herein, on his part, claimed himself to be a tenant of the suit premises and denied claim of the applicant/respondent. However, tenancy of the applicant/ respondent was upheld by the learned trial Court and the consequently, the appellant herein was directed to vacate the suit premises.

12. This factual scenario is outlined to give semblance about non-existence of relationship of landlord and tenant between the applicant/respondent and appellant herein. Moreover, the above decisions mainly were on the point of ambit and scope of Order 20 Rule 12 of the Code of Civil Procedure (for short "C.P.C.") and power in terms of Order 41 Rule 5 of C.P.C. However, certain observations are made as to the interest of litigating parties in the event of conditional interim relief given to the aggrieved party.

13. I cannot countenance the submissions canvassed by learned Counsel for the appellant that since the tenancy proceedings is going on in the Court of Small Causes, the amount so deposited by the appellant should not be released in favour of the applicant/respondent. One cannot be oblivious of the fact of passing of decree in favour of the applicant/ respondent herein. The

applicant/ respondent despite being successful, her right of enjoyment of fruits of decree are kept on hold by interim stay thereby postponing the execution of decree of handing over possession.

14. Having regard to the facts and circumstances of the case, in such circumstances, there is justification to allow the applicant/ respondent to withdraw the amount of compensation deposited so far by the appellant, which would definitely compensate her to certain extent. However, at the same time, the applicant/ respondent is directed to give an undertaking that in the event of appeal being allowed, the amount so withdrawn with accrued interest with prevailing rate of interest should be given to the appellant forthwith.

15. Civil Application is allowed and disposed of accordingly.

(V.G.BISHT, J.)