

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO.8010 OF 2021

VEER ALLOYS AND STEEL CO. PVT LTD THR MANUVIR
DHARAMVEER AGARWAL AND OTHERS
VERSUS
SARASAWATI DAL AND BESAN MILLS THROUGH ITS
PROPRIETOR SUMATILAL MOHANLAL DOSHI

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Mr. Niteen Gaware, Advocate for the petitioners.
Mr. D.P. Palodkar, Advocate for respondent.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 27-07-2021.

ORDER :

1. Heard Mr. Gaware, learned Counsel for the petitioners and Mr. Palodkar, Advocate for the respondent sole.

2. The basic grievance which is raised, is in respect of the order passed by the Appellate Court below Exh.14, an application filed by the petitioners/original defendant No.1, for stay of the judgment impugned, in so far as it relates to a decree of refund of Rs. 25,92,000/-, deposited by the defendants vide application at Exh. 91, in the trial Court. Mr. Gaware, learned Counsel for the petitioner submits, that the suit, which was for eviction and arrears of rent, has been dismissed, which has been challenged by way of an appeal, by the respondent in which the present petitioner, has also filed a cross objection, in addition to which an application under Order 41 Rule 5 of the Code of Civil Procedure has been filed which

is at Exh.14, seeking stay to that part of the decree of the trial Court, which directs refund of Rs. 25,92,000/-, to the plaintiff. Learned Counsel submits, that the entitlement, of the respondent to the aforesaid amount has been negated by trial Court itself while answering issue no. 1 which was to the effect as to whether the plaintiff proved that defendant No. 1 was a defaulter in payment of rent amount, which has been answered in the negative, in view of which according to learned Counsel, the plaintiff, was not entitled to the decree for the above amount. He therefore submits, that since the cross objection is already pending, it would be apt in the nature of things, for the amount to be invested in fixed deposit till the pendency of the appeal and the successful appellant would have the same.

3. Mr. Palodkar, learned Counsel for the respondent contends, that the petitioner, is admittedly in possession of a piece of land being plot No. A-2/1, as a tenant of the respondent, which the petitioner had taken on lease on the rent of Rs. 27,000/- per month and therefore, in any case, the petitioner, was liable to pay this amount to the respondent, for the occupation of the property, and that is what, has been done by the trial Court, by passing a decree permitting the respondent to withdraw the amount. Learned Counsel also invites my attention to the earlier orders, passed in Writ Petition No. 13825 of 2017.

4. Though the apprehension, of Mr. Gaware, learned Counsel for the petitioner, may have some weight, it is an admitted

position, that the petitioner was inducted into the property, by the respondent, which induction, was on the rent of Rs. 27,000/- per month. Though it is contended, that the induction, may not be in terms, of what the M.I.D.C., who is the original owner of the property, would permit, however, that is an issue between the M.I.D.C. and the respondent. In so far as the present petition is concerned, it cannot be disputed, that any occupation of the property, cannot be free of cost and therefore, the petitioner would be liable to pay the occupation charges by whatever nomenclature addressed. This being the position, the entitlement of the respondent, to the amount as decreed by the trial Court, would not be disputable, whatever the fate of the litigation in appeal would be. In this view of the matter, I do not find any infirmity with the impugned order passed by the Appellate Court.

5. The petition, therefore, fails and is accordingly dismissed. The respondent shall be at liberty to withdraw the amount deposited in the trial Court, as per the decree of the trial Court. No costs.

6. Needless to mention that the petitioner shall continue to deposit in the Appellate Court, occupation charges at the rate of Rs. 27,000/- per month, till decision of the appeal. Further orders regarding withdrawal of the amount shall be passed by the Appellate Court.

(AVINASH G. GHAROTE, J.)