

dik

Digitally
signed by
DHANAPPA
ERAPPA
KOSHTI
Date:
2021.10.08
17:58:36
+0530

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

WRIT PETITION NO. 4492 OF 2021

Jayprakash Jayram Kalambe

... Petitioner

Vs

Madhusudan @ Madhukar Pratap Kalambe

& Ors.

... Respondents

Ms. Vrushali Kabre for the Petitioner

Mr. Santosh Pawar for the Respondent No.1.

CORAM : A.S.GADKARI, J.

DATE : 4th OCTOBER, 2021

P.C. :

1. By the present petition under Article 227 of the Constitution of India, the petitioner original defendant No.6 has impugned, in particular clause 2 (i) of the Order passed below Exh.9 in Appeal No.192 of 2018, thereby fixing interim monthly compensation of Rs.5,000/- for the suit premises from the date of the decree i.e. 08.02.2018 till disposal of the appeal.

2. Heard Ms. Kabre, learned Advocate for the Petitioner and Mr. Pawar, learned Advocate for Respondent No.1/ original Plaintiff. Perused record.

3. Petitioner is facing eviction from the suit premises i.e. Room No.5, Ground Floor of Dagdi Building in Mahadev Mayaji Chawl at Tadvadi Cross Lane, Dharavi, Bombay-400 017 in a suit filed by Respondent No.1. The

Petitioner has preferred an Appeal No. 192 of 2018 before the Appellate Bench of Small Causes Court, Mumbai under Order 41 of the C.P.C. and had also filed an application for stay to the Judgment and Decree passed by the Trial Court dated 8.2.2018. The Appellate Court by its impugned Order passed below Exh.9, apart from various other directions, has also directed the petitioner to deposit interim monthly compensation @ Rs.5000/- per month from the date of decree i.e. 8.2.2018 till disposal of the said Appeal, as noted earlier.

4. Ms. Kabre, learned Advocate for the Petitioner submitted that, as a matter of fact the petitioner is occupier in the larger property of which the suit property is a unit. She submitted that, in a suit for partition filed by Mr. Shivprasad Kalambe, bearing S.C. Suit No.2352 of 1986, the petitioner and his other legal heirs are held to be entitled for $1/42^{\text{nd}}$ share in the larger suit property mentioned in the Judgment and Order dated 20/10/1999. She submitted that, the petitioner therefore, is also an owner in respect of the property in which he is residing and therefore, the petitioner is not liable to pay any compensation to the Respondent No.1. She therefore submitted that, even otherwise fixing compensation @ Rs.5000/- per month for a premises admeasuring 370 sq.ft. at Dharavi, Mumbai is on higher side and the same may be reduced. She therefore prayed that, to the extent of direction No.2(i) of para 10 of the impugned order dated 19.3.2020 may be set aside.

5. Per contra, Mr. Pawar, learned Advocate for respondent No.1 opposed the application and submitted that, the decree passed in Suit No.2352/1986 is stayed by this Court in an appeal and the said appeal is pending for final adjudication. He submitted that till date partition of the said property by metes and bounds has not been taken place. He further drew my attention to para 17 of the Judgment and Decree of the Trial Court dated 8.2.2018 in R.A.E. & R. Suit No.1014 / 3101 of 1986 wherein the Trial Court has observed that, Jayram has admitted that, he was tenant in the suit premises. He submitted that, as a matter of fact petitioner is using the suit premises for commercial purpose and despite the said fact the Trial Court has fixed interim compensation at much lower rate. He therefore submitted that, there are no merits in the petition and it may be dismissed.

6. Perusal of record indicates that, the suit premises is admeasuring about 380 sq.ft. carpet area situated at one of the busy commercial districts of Mumbai i.e. Dharavi. It is well known fact that, Dharavi is a commercial hub for cottage and micro industries. Therefore, fixing of interim compensation @ Rs.5,000/- for commercial premises admeasuring 380 sq.fts. i.e. the Suit premises is reasonable and not exorbitant. Record further indicates that, Respondent No.1 had in fact claimed compensation of Rs.20,000/- per month for the said suit premises as it is being used for commercial purpose by the petitioner. That, the Judgment and Decree passed in S.C. Suit No. 2352/1986 dated 20.10.1999 has

been stayed by this Court in an appeal and therefore, the partition of the suit property has not been effected till date. As the said issue of partition and actual share of the Petitioner is subjudice the appellate Court, it will not be appropriate for this Court to deal with the said issue in the present petition which basically arises out of an application filed under Order 41 Rule 5 of the Code of Civil Procedure, 1908.

7. After perusing the record, this Court is of the considered view that, the Appellate Court has not committed any error in fixing interim compensation at the rate of Rs.5000/- per month for the suit premises while granting stay to the execution of the decree of eviction passed by the Trial Court. The impugned order does not suffer from any error, either in law or on facts. I find no merits in the petition.

Writ Petition is accordingly dismissed.

(A. S. GADKARI , J.)