

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

**WRIT PETITION NO.4658 OF 2018**

Dhiraj Dharmachand Chhajer & Anr. ... Petitioners  
V/s.  
Yogesh Mangalsen Bahel & Ors. ... Respondents

Mr.S.S.Sadavarte for the Petitioners.  
Mr.Drupad S. Patil for the Respondents.

**CORAM : MADHAV J. JAMDAR, J.  
DATE : 12TH FEBRUARY, 2021.**

**P.C:-**

1. The Petitioners, who are Original Respondents/Plaintiffs in Civil Appeal No.994 of 2016 pending in the Court of Learned District Judge, Pune at Pune have challenged the order dated 18/01/2018 passed below Exhibit-5 in said Civil Appeal No.994 of 2016. By the said order, Exhibit-5 Application was rejected.

2. The Petitioners, who are original Plaintiffs instituted Special Civil Suit No.488 of 2012 inter alia for recovery of possession of the suit property from the Defendants-Respondents. The Learned Trial Court decreed the suit by the Judgment and Decree dated 29/11/2013. The present Respondents i.e. Appellants filed First Appeal No.509 of 2014 in this Court and for seeking stay of the decree also filed Civil Application No.1702 of 2014. This Court admitted the Appeal by the order dated 22/07/2015 and stayed the operation of eviction decree by passing the following operative order :

“a) Operation and implementation of clause 2 of the theimpugned judgment and award dated 29.11.2013 passedby 7th Joint Civil Judge, Senior Division Pune in S.C.S.No.488 of 2012 is stayed till the

hearing and final disposal of the First Appeal. Clause 2 reads thus:

“(2) The defendants shall hand over the vacant possession of the suit premises to the plaintiffs within 45 days from today. In case the defendants failed to deliver the possession then the plaintiffs should recover the possession of suit premises at the cost of defendants thereafter.”

b) Applicants defendants are restrained by an order of injunction from creating any third party right, title and interest in respect of the suit premises till the hearing and final disposal of the suit premises.

c) Applicants defendants to pay monthly compensation of Rs.22,500/- to the plaintiff on or before 10th of each month.

d) Advocate for the respondents plaintiffs after taking instruction from the plaintiff who is present in court makes a statement that plaintiff is ready and willing to accept monthly compensation from the applicants defendants without prejudice to the rights and contentions of the present First Appeal and same is allowed.

e) Liberty granted to the respondents plaintiffs to prefer appropriate application if they so desire for monthly compensation in respect of the suit premises and that will be decided on its own merits.

f) Applicants defendants to clear the arrears if any in respect of payment of monthly compensation within one month from today.

g) Civil Application is disposed of accordingly.”

3. In the meanwhile as there was change in pecuniary jurisdiction, the said Appeal No.509 of 2014 was transferred from this Court to the District Court, Pune and renumbered as Civil Appeal No.994 of 2016.

4. It is significant to note that clause (e) of the aforesaid order of this Court dated 22/07/2015 specifically grants liberty to the Respondents/Plaintiffs to prefer appropriate application, if they so desire, for monthly compensation in respect of suit premises to be decided on its own merits. Pursuant to the said liberty granted by this Court, the present Petitioners i.e. Respondents in the said Appeal filed Application bearing Exhibit-5 in Civil Appeal No.994 of 2016 seeking compensation and also alternatively sought prayer to grant reasonable compensation. By the impugned order dated 18/01/2018, the said Application was rejected.

5. Mr.Sadavarte, learned Advocate for the Petitioners submitted that the learned District Judge, Pune at Pune while passing the impugned order has ignored clause (e) of the order dated 22/07/2015 of this Court. Mr.Drupad Patil, learned Advocate for the Respondents is not in a position to controvert the said submission. A perusal of the impugned order shows that after quoting clauses (a), (b), (c) and (d) of the order dated 22/07/2015 of this Court, the Learned Appellate Court has observed as follows :

“In view of above, monthly compensation has been already quantified. D.H. is ready, willing and has accepted. Thus in absence of changes in the circumstances, it need not be re-assessed or re-quantified. The above quantum is interim and subject to decision in inquiry qua mesne profit directed by impugned decree, if sustained.”

Thus, it is clear that the Learned Appellate Court completely ignored clause (e) of the said order and therefore the impugned order is totally perverse. Thus, the impugned order dated 18/01/2018 is required to be quashed and set aside.

6. It is to be noted that the Respondents are in possession of the suit property and they are depositing Rs.22,500/- per month in the Lower Appellate Court in compliance of clause (c) of the said order dated 22/07/2015. The suit was instituted on 7/04/2012. The leave and license agreement was executed between the parties on 1/02/2001 and clause 13 of the same is as follows :

“13. The period of license may be extended at the choice of the Licensor from time to time on the terms and conditions of this agreement or adding new conditions, but the license fee will be enhanced by Rs.2000/- per month on the previous fee for each and every period/term of eleven months for example for the period January 2002 to November 2002 Rs.17,000/- for the period December 2002 to October 2003 Rs.19,000/- for the period November 2003 to September 2004 Rs.21,000/- so on.”

7. In view of the above, Mr.Patil, on instructions, has fairly submitted that with effect from 1st January, 2021, the Respondents shall deposit in the Lower Appellate Court an amount of Rs.35,000/- per month as and by way of adhoc arrangement without prejudice to the rights and contentions of the Respondents. The said statement is accepted. It is also clarified that such deposit will also be without prejudice to the rights and contentions of the Petitioners, as according to Mr.Sadavarte, Petitioners would be entitled for higher amount than Rs.35,000/- per month.

8. In view of above the following order is passed :

(a) The impugned order dated 18/01/2018 passed by learned District Judge, Pune below Exhibit-5 in Civil Appeal No.994 of 2016 is quashed and set

aside and said Exhibit-5 application is remanded back to the Learned Appellate Court for deciding the same afresh on its own merits.

(b) The Lower Appellate Court is directed to dispose of application bearing Exhibit-5 in Civil Appeal No.994 of 2016 within three months from today.

(c) The Petitioners are at liberty to file fresh application in addition to said Exhibit-5 application. If such fresh application is filed within a period of two weeks from today, the same shall also be considered and decided alongwith Exhibit-5 application within a period of three months from today.

(d) The Respondents are directed to deposit in the Lower Appellate Court an amount of Rs.35,000/- per month as compensation w.e.f 1st January, 2021 on or before 10th of every month. It is clarified that said deposit of Rs.35,000/- per month is adhoc arrangement and the same is without prejudice to the rights and contention of both parties. The Respondents to deposit said compensation amount for the month of January and February on or before 26th February, 2021. It is clarified that aforesaid compensation amount will be subject to the further orders passed by the Lower Appellate Court.

(e) The Lower Appellant Court shall decide said Exhibit-5 application and fresh application, if any, to be filed by the Petitioners, on its own merits within three months from today.

8. The Writ Petition is disposed of in aforesaid terms.

**[MADHAV J. JAMDAR, J.]**