

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2185 OF 2019
IN

FIRST APPEAL NO.895 OF 2019

VISHAL
SUBHASH
PAREKAR

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Rajput R. Mishra (since deceased)
Through legal heirs

...Appellants/
Ori. Defendants

vs.

Lakhbeer Kaur (since deceased)
Through legal heirs

...Respondents/
Ori. Plaintiffs.

Mr. Shreepad Murthy a/w. Ms. Apurva Mhatre, Clarissa Mirauda
i/b. Mr. Abhishek Patil, for the Appellants/Applicants.
Ms. Jennifer Michael i/b. Alisha Pinto, for Respondent Nos. 1 to 4.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 27, 2021

P.C.:

CA.NO.2185 OF 2019:-

. This is an application for stay to the execution, operation and implementation of the judgment and decree of eviction passed by learned Ad-hoc Judge, City Civil Court, Greater Mumbai in S.C.Suit No. 4666 of 2008 dated 10th May, 2019 whereby the defendants/appellants are declared to be unlawful occupants of 'Mishra Pan Bhandar', admeasuring 8 x 10 sq.fts. situated at Juhu Tara Road, CTS No. 944 and the defendants/appellants were directed to remove the said structure within three months thereof.

2. The learned counsel for the appellants submitted that the appellants have a strong case on merits. The execution of the decree

during the pendency of the appeal would cause irreparable prejudice to the appellants/applicants. Hence, the execution of the decree be stayed.

3. In opposition to this, the learned counsel for respondents /original plaintiffs resisted the prayer to stay the execution of the decree. The learned counsel would further urge that the applicants/defendants have been held to be in unlawful occupation of the suit shop. The execution cannot be stayed unless the appellants /defendants pay compensation towards unlawful occupation. Reliance is placed on the judgment of the Supreme Court in the case of **Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.**¹.

4. While granting the ad-interim stay, this Court had granted liberty to the applicants/respondents to file affidavit/documents indicating the rent/license fee which the suit property would fetch. Affidavits have been filed on behalf of the applicants and respondents.

5. The learned counsel for the applicants submits that the rent would be in the range of Rs. 15,000/- to 20,000/- per month, at the highest. In contrast, the learned counsel for the respondents submitted that the respondents have received offers of rent in the range of Rs.60,000/- to 65,000/- p.m. and one eatery has even offered to pay Rs. 85,000/- per month for the said premises. It was

¹ (2005) 1 Supreme Court Cases 705.

further submitted that the suit shop is located at a vantage point and has huge business potential.

6. In the light of the area of the suit shop, the location thereof, the business being carried out therefrom and potentiality of income it would be expedient to direct the defendants to pay a sum of Rs. 25,000/- per month as compensation for unlawful occupation from the date of the decree.

7. In view of the above, there shall be stay to the execution, operation and implementation of the impugned decree till the final decision of this appeal subject to the defendants depositing a sum of Rs. 25,000/- per month as compensation for the occupation of the suit premises from the date of the decree.

8. Since the decree was passed on 10th May, 2019 the appellants/ applicants are granted six months time to deposit the arrears of the compensation.

9. The applicants shall continue to deposit the further compensation at the said rate at quarterly intervals.

10. The application accordingly stands disposed of.

FA NO.895 OF 2019:-

11. Liberty to the respondents to seek expeditious hearing of the appeal.

(N. J. JAMADAR, J.)