

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No. 5509/2021

M/s. Purohit Electricals, Akola
..VS..
Avinash s/o Radheshyam Agrawal and anr .

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M. R. Joharapurkar, Advocate for the petitioner
Shri D.R. Khapre, Advocate for respondent no. 1/Caveator

CORAM : AVINASH G. GHAROTE, J.

DATED : 23/12/2021

Heard Shri M. R. Joharapurkar, learned Counsel for the petitioner and Shri D.R. Khapre, learned Counsel for respondent no. 1.

2. The only contention advanced is that though there was no decretal amount directed to be paid in the decree dated 18.03.2021, passed by learned trial Court in Regular Civil Suit No. 119/2012, the Appellate Court while granting a stay under Order 41 Rule 5 of the Code of Civil Procedure (CPC), has directed the stay to be conditional upon deposit of the decretal amount of Rs.3,00,000/- and mesne profit. It is submitted that by decree dated 18.03.2021, and enquiry into mesne profit has been directed and, therefore, determination on this count is not as yet made and, therefore, it was not permissible for the learned Appellate Court, to have

directed the deposit of Rs.3,00,000/- on account of decreetal amount and mesne profit.

3. Shri D.R. Khapre, learned Counsel for respondent no. 1, submits that in anticipation of the mesne profit been decided, the direction to deposit the same would be justified.

4. Perusal of the decree dated 18.03.2021, indicates that it relates to only handing over vacant possession of the suit shop to the plaintiff within three months of the date of the order. Decree further directs an enquiry into the mesne profit under Order 20 Rule 12 of the C.P.C., which would indicate the quantum of mesne profit is not as yet determined. The Appellate Court while granting stay, has already put the defendant/tenant to terms by directing deposit of Rs.10,000/- per month during the pendency of the appeal as against the rent of Rs.950/ per month. It is, therefore, apparent that the petitioner/tenant has already been put to terms for continuing in occupation during the pendency of the appeal. That being the position, the interim order, in so far as, it directs the deposit of the decreetal amount of Rs.3,00,000/-, cannot be sustained and the direction as contained in para nos. 2 and 3 of the operative order of the impugned order, is hereby quashed and set aside, rest of the order is maintained.

5. The writ petition is partly allowed in the above terms. No costs.

6. It is made clear that, in case respondents are aggrieved by the quantum of the occupation charges imposed by learned Appellate Court, the respondents are free to challenge the same by way of independent petition.

JUDGE

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