

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 104 OF 2015

IN

SECOND APPEAL NO. 41 OF 2015

Santan Cipriana Fonseca (Expired) and 4

Others ... Applicants

Versus

Emedia Conceicao de Rosario Fonseca e

Correia and 2 Others ... Respondents

Mr. A.F. Diniz, Senior Advocate with Mr. R.J. Pinto, Advocate
for the Applicants.

Mr. S.D. Lotlikar, Senior Advocate with Ms. Sailee Kenny
and Mr. Sarvesh Sawant, Advocates for Respondent Nos. 1
and 2(a).

Mr. L. Raghunandan, Advocate for Respondent No. 3.

CORAM. SANDEEP K. SHINDE, J.

RESERVED ON. 7th JULY 2022

PRONOUNCED ON. 13th JULY 2022

ORDER.

1. Heard learned Counsel for the parties.

2. Learned Civil Judge Senior Division, Bicholim, vide judgment and decree dated 29.06.2010, ordered and directed the defendants-appellants herein, to hand over the vacant possession of the suit house unlawfully occupied by them to the plaintiffs-respondents, herein. The said decree was confirmed vide Judgment dated 12.12.2014 in Regular Civil Appeal No. 397 of 2010. Pending Second Appeal, appellants-defendants moved this application seeking stay to the execution of the impugned decree dated 12.12.2014. In reply, respondents-plaintiffs, claimed, subject to appellants-defendants depositing a sum of 25,000/- per month from the date of impugned decree, Court may stay its execution.

3. Mr. S. D. Lotlikar, learned Senior Advocate appearing for decree-holder (D.H. for short), submitted that the suit property admeasures 875 square metres with a house admeasuring 340 square metres therein. Mr. Lotlikar submitted that the suit property is situated in Tivim, a well developed town, which is at a close distance from City of Mapusa and the market value of the property in the vicinity is around 3,000/- per square metre. Mr. Lotlikar, relied on the rate chart available on the website of National Generic Document Registration System, Department of Land resources.

4. On the other hand, Mr. A. F. Diniz, learned Senior Advocate placed on record inspection report of M/s.Paraz and Associates, Project Consultants, Engineers and Valuers, to contend that western portion of the house admeasuring about 190 square metres is in dilapidated condition and remaining eastern portion about 150 square metres, is seen to be inhabited. Thus, submitted

having regard to remote location of the property and its present condition, it would not fetch rent more than Rs. 5000/- per month.

5. Mr. Lotlikar, learned Senior Counsel, submitted that before the Executing Court, learned Counsel for the Judgment-debtors represented that the impugned decree was stayed, although Appeal was admitted without granting stay. Mr. Lotlikar relied on the roznama dated 13.06.2018, to submit that due to such a representation, decree could not be executed till 29.04.2022, the date on which Trial Court set right the records. Mr. Lotlikar, therefore, submitted that subject to appellants depositing Rs.25,000/- per month, from the date of the impugned decree, this Court may stay the execution thereof.

6. Mr. Diniz, learned Senior Counsel submitted that this Court may direct the appellants to deposit the fair rent from the date on which this application is disposed of and not from the date of impugned decree.

7. I have carefully considered the submissions of the Counsel for the parties.

8. In the case of **M/s. Martin & Hariss Private Limited & Another vs. Rajendra Mehta & Others** (Civil Appeal Nos. 4646-47 of 2022), the Hon'ble Supreme Court vide Judgment dated 06.07.2022, has held that once a decree for possession has been passed and the execution is delayed, depriving the decree holder to enjoy the fruits, it is necessary for the Appellate Court to pass appropriate orders, fixing reasonable mesne profits, which may be equivalent to the market rent required to be paid by a person, who is holding over the property. The Appellate Court does have

jurisdiction to put reasonable terms and conditions as would, in its opinion reasonable to compensate the decree holder for loss occasioned by delay in execution of the decree while granting the stay. Thus, in view of the law propounded, what market rent, the property would fetch, is the question.

9. In the case at hand, the suit was instituted in 1999; possession decree was passed in 2009. The first Appellate Court confirmed the Decree of the Trial Court on 12th December 2014. For whatever reasons, the Executing Court, could not proceed to execute the decree believing execution of the decree was stayed until 29th April 2022, the date on which, records were set right. In any case, in view of the judgment in the case of **M/s. Martin & Hariss Private Limited** (supra), it is necessary for the Appellate Court to pass the appropriate order fixing the reasonable mesne profits, which may be equivalent to the market rate.

10. Herein, the suit property admeasures 875 square metres and the house therein admeasures 340 square metres. Assuming only 150 square metres is habitable area of the house, yet, having regard to the property valuation chart produced on record by Mr. Lotlikar, of National Generic Document Registration System, Department of Land Resources and further having regard to the location of the suit property, in my view, the reasonable rent would be around Rs. 10,000/- per month. As such, the appellants shall deposit Rs.10,000/- per month, due from June 2018 till July, 2022 in the Registry of this Court, in four monthly equal installments i.e all before the 31.12.2022 and shall deposit Rs.10,000/- (Rupees Ten Thousand Only) per month from August, 2022 and onwards till the disposal of Second Appeal. Monthly deposit of ₹ 10,000/- (Rupees Ten Thousand only), shall be made

on/or before 10th day of succeeding month for the previous month. However, first installment of arrears, shall not be less than Rs.1,25,000/-, and shall be deposited on or before the 01.09.2022. Subject to deposit, the impugned decree shall remain stayed. In case the appellant Judgment-Debtor commits default, the DH shall move for vacating and/or modifying the stay order, granted herein.

11. Subject to conditions, execution of the decree is stayed. The application is disposed of in the aforesaid terms.

SANDEEP K. SHINDE, J.