

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5865 OF 2021

Waman Appa Kambli (Decd.thr) LHRs .. Petitioners

Versus

Diwakarsingh Badrinarayan Singh .. Respondent

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Mr.Sudhir V. Sadavarte for the Petitioners.

Mr.Ghanshyam Mishra for the Respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATED : 18th JANUARY, 2022

P.C:-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. On 07/01/2022, Shri Mishra, the learned Advocate has caused an appearance on behalf of the respondent. He has been heard extensively today. He submits that since his client is not in town, he could not file the Vakalatnama and due to the Covid-19 restrictions, he could not enter an appearance note on his behalf. He, however, submits that there is no issue as regards his appearance as the respondent has fully authorised him to conduct the matter.

3. Having considered the extensive submissions of the learned counsel for the respective sides, I have gone through

the petition paper-book with their assistance. The affidavit dated 14/01/2022 filed by one of the petitioners, namely, Jyotsana Waman Kambli, has not been served on Advocate Mishra, since his Vakilpatra was not entered. I have perused the same, which is accompanied by a valuation certificate dtd.16/03/2021, issued by a private valuer terming the property as 'a slum/residential property'.

4. By this petition, the petitioners are aggrieved by the interlocutory order passed by the Appellate Bench-Court of Small Causes at Mumbai (Bandra Branch) below Exh.6 in Appeal No.35 of 2020. The petitioners are the original defendants in the suit instituted in 1995 bearing No.261/690 of 1995. Having suffered a judgment and decree, they have preferred the Appeal before the Appellate Court. While partly allowing their interim relief application (Exh.6), the learned Appellate Court has issued the following directions.

“2. The execution and operation of the impugned decree dated 11.12.2019 passed by the learned trial Court to the extent of the possession is hereby stayed against the appellants till the disposal of this appeal subject to following terms and conditions.

3. The appellants shall deposit the compensation in respect of the suit premises @ Rs.9000/- p.m. from the date of decree w.e.f. 11.12.2019 upto February, 2021 within one month from the date of passing of this order in the court.

4. The appellants shall continue to deposit the compensation of the suit premises at the same rate i.e. @ Rs.9000/- p.m. for the period w.e.f. March, 2021 and onwards till disposal of this appeal on or before 10th day of each succeeding month in the Court.

5. The Additional Registrar of the Small Causes Court, (B.B.) Mumbai is hereby directed to invest the amount of compensation as and when deposited by the appellants in the Court in the Fixed Deposit for a term of at least one year in any Nationalized Bank immediately on the very next working day in accordance of law and as per rule.

6. If, the appellants failed to comply with this order as directed, then, stay granted by this order automatically stands vacated.”

5. It is well settled that the High Courts should be slow in interfering with interlocutory orders. If an interlocutory order appears to be equitable or an attempt to balance the equities, there should be no interference. Unless such an order is grossly perverse and erroneous, which is unsustainable, the High Courts should be slow in causing an interference. Nevertheless, equities can be balanced if it appears that a large financial burden is cast on the aggrieved party.

6. There is no dispute that the suit property is a room admeasuring 18 ft. x 10 ft. which is equal to 180 sq.ft. A mezzanine floor/loft has been created, which obviously cannot be an additional 180 sq.ft. as some space will have to be left

open for installing a staircase so as to have access to climb up the mezzanine floor. The view taken by the Appellate Court that it has to be 180 sq.ft. multiplied by two, would not be a proper calculation and as such, it could be around 300 sq.ft, instead of 360 sq.ft.

7. Considering the locality in which the suit property is situated viz. Diwakar Singh Chawl, CTS No.334, 334/1, Anand Wadi, Kurar Village, Malad (East), Mumbai and the fact that the suit premises are used for residential purposes consisting of a room, a kitchen and a mezzanine floor, I am of the view that the Appellate Court has not committed any error in issuing the direction at clause (4) by which, the petitioners are to pay compensation of Rs.9,000/- per month from March 2021 onwards.

8. In clause (3) of it's direction, reproduced above, the Appellate Court has directed the petitioners to deposit compensation at the rate of Rs.9,000/- per month from the date of the decree i.e. 11/12/2019 till February, 2021. I am of the view that this is likely to cast a large financial burden on the petitioners, who claim to be vegetable vendors, notwithstanding the contention of the respondent that they also operate a business of preparing imitation jewellery. So also, this Court has protected the petitioners by an order dated 24/9/2021 on the condition of depositing 50% of the arrears. The said amount has been deposited by the petitioners (Rs.97548.50) before the Appellate Court. In my view,

equities can be balanced by maintaining the said order, passed by this Court with a direction to the learned Appellate Court to decide the Appeal within a particular time.

9. In view of the above, this petition is partly allowed. Clause (3) of the impugned order would be modified to the extent of directing the Appellants to deposit 50% of the amount, which has been so done. This condition would operate till the decision in the Appeal. Needless to state that the petitioners would comply with the direction at clause (4), scrupulously.

10. The learned Appellate Court shall decide Appeal No.35 of 2020, with the wholehearted cooperation of the litigating parties, as expeditiously as possible and, preferably, on or before 30/04/2022.

11. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)