

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

WRIT PETITION NO. 2235 OF 2021

Gopaldas s/o Bhikulalji Gupta -- Petitioner

Vs.

Sanjay s/o Navalkishore Agrawal and others -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J.M. Gandhi, Advocate for Petitioner
Mr. N.R. Tekade, Advocate for Respondent No.1

CORAM : MANISH PITALE, J.

DATE : 22nd JUNE, 2022

Heard learned counsel for the parties.

2. By this writ petition, the petitioner i.e. the original respondent has challenged order dated 12/11/2020, passed by the Court of District Judge-5, Akola (hereinafter referred to as Appellate Court), whereby interim stay of a decree passed by the Court of Civil Judge (Senior Division), has been granted on certain conditions. The petitioner contends that the conditions imposed while granting interim stay in favour of the respondents are extremely lenient and that the law with regard to occupation charges that ought to be paid by an appellant, who desires to continue in possession of the property, has been completely ignored.

3. This Court issued notice on 28/06/2021, for final disposal in the present petition. The respondent No.1 entered appearance through counsel. The respondent Nos. 2(i) & (ii), despite service chose not to appear before this Court.

4. The short issue that arises for consideration in the present petition is, as to whether the Appellate Court was justified in granting stay of the order of the Trial Court on conditions stated in paragraph No.3 of the operative portion of the impugned order dated 12/11/2020.

5. The material placed on record shows that by a judgment and decree dated 07/02/2020, the suit filed by the petitioner was decreed and the respondents were directed to handover possession of the suit property to the petitioner within two months of the date of the decree.

6. The respondents filed appeal before the Appellate Court, along with an application for grant of stay. By the impugned order, the application was allowed and the decree was stayed on the condition that the respondents would deposit cost amount of Rs.21,390/- and a further amount of Rs.50,000/-, as a security amount in the Appellate Court. It is an admitted position that both these amounts have been deposited by the respondents in the Appellate Court.

7. The learned counsel appearing for the petitioner submitted that the Appellate Court failed to appreciate the law

laid down by the Hon'ble Supreme Court in the case of **M/s Atmaram Properties (P) Ltd. Vs. Federal Motors (P.) Ltd.** reported in (2005) 1 SCC 705, reiterated in the case of **State of Maharashtra & Anr. Vs. M/s Super Max International (P) Ltd.** Reported in (2009) 9 SCC 772, as regards the question of the liability of an appellant challenging such a decree to pay occupation charges, in the backdrop of the fact that from the date of the decree, the relationship between the parties is severed.

8. It is further pointed out that the Appellate Court was made aware of an admission given in cross-examination by respondent No.2 that on the date when the cross-examination was being conducted, even according to the respondent No.2, the suit property would have fetched a monthly rent of Rs.25,000/-. It is submitted that the Appellate Court failed to take into consideration the aforesaid factor and all other relevant factors for considering the question of payment of occupation charges by the respondents, if they desired to continue in possession of the suit property.

9. On the other hand, the learned counsel for the respondent submitted that the condition imposed in the impugned order was just and fair, considering the nature of the decree passed by the Trial Court and the findings rendered in the judgment of the Trial Court. It is submitted that the respondents had already deposited the amounts as directed in

the impugned order and that, therefore, this Court cannot interfere with the same and that the appeal may be expedited.

10. This Court has considered the impugned order and the material placed on record in the backdrop of the submissions made by the rival parties. There is no dispute about the fact that the respondents are facing a decree under which they are required to handover possession of the suit property to the petitioner. The effect of the said decree has been kept in abeyance and it needs to be examined whether the Appellate Court has arrived at a just and fair finding while giving direction contained in clause No.3 of the operative portion of the impugned order dated 12/11/2020.

11. A perusal of the same shows that the respondents have been directed to deposit a paltry sum of Rs.50,000/- and that too as a security amount over and above amount of Rs.21,390/-. This Court is of the opinion that for the respondents to be able to continue to enjoy the possession of the suit property, appropriate conditions towards occupation charges ought to have been imposed in the light of law laid down by the Hon'ble Supreme Court in the aforementioned judgments. It is expected that the quantum of occupation charges be determined on the basis of material that may be placed on record by the parties. In this case, an indicator could be the admission given in cross-examination by respondent No.2 that the suit property would have fetched rent of about

Rs.25,000/- per month even at the time when the said respondent was being cross-examined.

12. Nonetheless, there is lack of material before this Court or that even before the Appellate Court to determine the quantum of occupation charges. By considering the aforesaid admission and the fact that the suit property is a flat situated in the city of Akola, this Court is of the opinion that the occupation charges to the extent of Rs.15,000/- per month ought to be paid by the respondents for enjoying an interim order of stay of the decree in their favour.

13. Accordingly, the writ petition is partly allowed.

14. The impugned order is modified, to the extent that in addition to conditions imposed in clause No.3 of the impugned order dated 12/11/2020, for grant of stay, in favour of respondents, it is further directed that the respondents shall pay amount of Rs.15,000/- per month towards occupation charges to the appellant from the date of the decree passed by the Trial Court, during pendency of the appeal before the Appellate Court.

15. The decree was passed against respondents on 07/02/2020 and hence, it is found that they would be liable to pay the aforesaid monthly amount towards occupation charges from February, 2020. Accordingly, the respondents are directed to deposit arrears of occupation charges @15,000/- per month

from February 2020, till June, 2022, within a period of two months from today before the Appellate Court.

16. The respondents are further directed to deposit the amount of Rs.15,000/- per month towards occupation charges from July, 2022, before the 7th day of each month, in the Appellate Court.

17. The petitioner will be entitled to withdraw the amount of arrears of occupation charges directed to be deposited by the respondents.

18. The petitioner is also permitted to withdraw the monthly amount towards occupation charges upon the same being deposited by the respondents.

19. It is made clear that if the respondents fail to deposit the aforesaid amount of arrears within the stipulated period of time or there are two consecutive defaults on the part of the respondents in depositing the amount towards monthly occupation charges from July, 2022, onwards, the interim order granted by the Appellate Court shall stand vacated.

20. The writ petition is disposed of in above terms.

JUDGE