

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

CIVIL APPLICATION (CAW) NO.168/2023

IN

WRIT PETITION NO.306/2021

Wasudeo Bhojrajmal Santani

...Versus...

Rajesh Ramniklal Sangani

Applicants : Kamal Wasudeo Santani and others

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

Court's or Judge's orders

Shri J.B. Gandhi, Advocate for petitioner
Shri M.G. Sarda, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 18/01/2023

1. The civil application seeks to bring on record the legal representatives of the deceased petitioner.
2. Shri M.G. Sarda, learned counsel for the respondent has no objection, considering which, the civil application is allowed. The legal representative of the deceased petitioner be brought on record during the course of the day.
3. The civil application stands disposed of. No order as to costs.

WRIT PETITION NO.306/2021

1. The petition challenges the order dated 18/02/2020 passed by the District Judge –3, Akola on an application under Order 41 Rule 5 of the Code of Civil Procedure, whereby for continuing the petitioner/tenant in occupation of the premises in question, occupation charges of Rs.15,000/- per month from the date of the appeal have been directed to be paid.

2. It is contended by the learned counsel for the petitioner that the petitioner was already paying a hefty sum of Rs.5236.58 per month and the increase directed is nearly three times. He further submits that no material has been brought on record to indicate permissibility of directing payment of the aforesaid amount of compensation. He therefore submits that the compensation be reduced to reasonable amount.

3. Shri Sarda, learned counsel for the respondent supports the impugned order and submits that the continuation of the occupation, which consequent to the termination, becomes illegal cannot be at the will and fancy of the petitioner/tenant but has to be on some terms and therefore the amount fixed by the learned Appellate Court by the impugned order is reasonable and fair. The impugned order, indicates, that

no documentary evidence is forthcoming for coming to the conclusion that a particular figure can be carved out for the purpose of fixation of interim compensation as found by the learned Appellate Court in para 6 of the impugned order. This would clearly indicate the absence of material on record, to derive the above figure. The premises in question, is situated on the second floor and it is not disputed that similar premises, is fetching a rent of Rs.5,783/-, for which, the receipt dated 18/07/2017 has been placed on record. That being the position, the impugned order, clearly appears to be without any material basis and is therefore quashed and set aside and is modified, by directing the petitioner, to pay the occupation charges of Rs.10,000/- per month from the date of the appeal.

4. The writ petition is partly allowed in the aforesaid terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar