

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

Writ Petition No.2220/2021

Arvind V Smt. Meera and others

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

Court's or Judge's Orders

Mr. J.J. Chandurkar, Adv. for petitioner.

Mr. P.S. Patil, Adv for resp. nos.1 and 2.

CORAM : AVINASH G GHAROTE, J.

DATE : 16-01-2023

Heard Mr. Chandurkar, learned Counsel for
the petitioner and Mr. Patil, learned Counsel for the
respondents.

2. The petition challenges the order dated 28-02-20 (pg 70), whereby while granting the application under Order 41 Rule 5 of the Code of Civil Procedure (CPC) for stay of the decree of the trial Court of eviction, the petitioner has been directed to make payment of Rs. 24000/- per month for the suit premises which is admeasuring 120 sq.ft. which comes to the rate of Rs. 120/- per sq.ft. By placing reliance upon the sketch map at page 88, it is submitted that the Court while exercising the power under Order 41 Rule 5 of the CPC, in respect of Sandesh Optical, shop situated on plot beyond the building in which the suit shop was situated has been directed to deposit an amount of

Rs.5000/- per month (pg 86), upon consideration on the parameters in *State of Maharashtra and another vs M/s Super Max International Pvt Ltd and others*, reported in *AIR 2010 SC 722* and therefore the impugned order liable to be quashed and set aside and the amount reduced to what has been granted in case of Sandesh Optical.

3. Mr Patil, learned Counsel for the respondents, does not dispute the map at page 88, which shows the comparative location of Sandesh Optical and that of the suit shop. He also does not dispute the order dated 03-02-20 passed below Exh 7 in RCA No.76/19 (Narayan v Sachidanand and others), in which Sandesh Optical is located.

4. That being the position, since the comparative locations of the properties which is the subject matter of RCA No.76/19 and the present property, is not in dispute and since the direction has been granted under Order 41 Rule 5 of the CPC or deposit of Rs. 5000/- per month in RCA No. 76/19 (Narayan v Sachidanand and others) and considering that the suit shop is located on the backside from the main road, the occupation charges for the suit shop cannot be more than those which have been granted for the suit premises in RCA No.76/19. This position does not appear to be considered by the Court below who is

the same Court which has passed the order in RCA No.76/19, considering which, the impugned order is quashed and set aside insofar as it determines the quantum of occupation charges in respect of the suit property and the same is reduced to Rs 5000/- per month from the date of the application. The entire amount shall be deposited in the Appellate Court within a week from today.

5. A statement is made that by an interim order dated 25-06-21 Rs. 5000/- per month has been deposited.

6. However, it is directed that if the same is not deposited, the same shall be deposited before the Appellate Court within a period of one week from today.

JUDGE