

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.328 OF 2019
IN
SECOND APPEAL NO.239 OF 2019

Siddiki Mohammad Bombayawala
V/S

...Appellant/Applicant

Shantabai Ramanlal Khambolaja Dave
deceased Smt. Rekha Girish & Ors.

...Respondents

...

Mr. Suresh M. Kamble for the Appellant/Applicant.
Mr. Vishwajeet S. Kapse for Respondents.

...

CORAM: SANDEEP V. MARNE, J.
DATE : JANUARY 3, 2024.

P.C.:

1 This Civil Application is filed by the Appellant seeking stay to the execution, operation and implementation of the judgment and order dated 28 November 2018 passed by the District Court in Regular Civil Appeal No.110 of 2013 and also to the judgment and decree dated 16 March 2013 passed by the Civil Judge Junior Division, Mahabaleshwar. While admitting the Appeal by order dated 5 November 2019 this Court has made following observation in paragraph 3 of the order:

‘3. Civil Application No.328 of 2019 is for stay of the impugned judgment and order of the first appellate court as well as the trial court decreeing the Respondent’s suit. The civil application needs to be heard, particularly for considering whether

any compensation should be ordered to be paid by the Appellant as a condition of stay of execution of the orders passed by the courts below. The Respondents may file their reply to the civil application within two weeks from today. Rejoinder, if any, within two weeks thereafter. The civil application to come up for hearing on 9 December 2019. In the meantime, there will be an ad-interim stay of the execution of the impugned orders.'

2 The Respondents have placed on record the report of Shri Shashikant R. Dhumal, Government Registered Valuer, dated 11 November 2019 who has assessed the rent in respect of the suit structure at Rs.1,20,000/- per annum. Mr. Kapse, the learned Counsel appearing for the Respondent would submit that after taking into consideration the report of the valuer, the Appellant be directed to pay to the Respondent No.2A monthly compensation of Rs.10,000/-.

3 Per contra Mr. Kamble, the learned Counsel appearing for the Appellant would submit that the Appellant has been paying rent at the rate of Rs.1,200/- per month to the Respondents and that the compensation to be fixed during pendency of the present Appeal cannot exceed double the amount rent so paid. Mr. Kamble would place reliance on judgment of this Court in ***Girish Jhauhal Choubey vs. Jawaharlal Munot Public Trust & Ors.*** 2014 (1) LJSOFT 32.

4 I have considered submissions canvassed by the learned Counsel appearing for the parties. While admitting the Appeal, this Court has

directed that stay to the execution of the orders passed by the Courts below can be considered upon payment of compensation to the Respondents. As per the report of the valuer, the rent in respect of the structure is assessed at the rate of Rs.10,000/- per month. The contention of the Appellant that the rent paid by the Appellant to the Respondents is required to be taken into consideration while determining the amount of compensation does not merit consideration as the Appellant is not a tenant in respect of the suit premises. His eviction is not directed under the provisions of the Tenancy Law. On the contrary the courts below had held that the Appellant is a trespasser. In that view of the matter, the rent allegedly paid by the Appellant to the Respondent cannot form the basis for determining the amount of compensation payable in respect of the suit structure during pendency of the Appeal. Reliance of Mr. Kamble on the judgment of this Court in *Girish Jhauhal Choubey (supra)* would not cut any ice as the aid judgment deals with the issue of stay of eviction decree passed against tenant in a suit filed by landlord.

5 Considering the fact that the area of the suit structure is about 500 sq. ft. carpet situated at Panchgani, Taluka Mahabaleshwar, District Satara, in my view, ends of justice would meet the Appellant is directed to pay monthly compensation of Rs.5,000/- to the Respondents as a condition for grant of stay to the execution of the orders passed by the courts below. Accordingly, I proceed to pass the following order:

ORDER

- i) There shall be stay to the operation, implementation and execution of the judgment and order dated 28 November 2018 passed in Regular Civil Appeal No.110 of 2013 and also to the judgment and decree dated 16 March 2023 passed by the Civil Judge Junior Division, Mahabaleshwar on condition that Appellant shall pay monthly compensation of Rs.5,000/- to the Respondents in respect of the suit premises from the date of filing of the Appeal.
- ii) The arrears in respect of the compensation so fixed shall be paid by the Appellant to Respondent No.2A within a period of 12 weeks from today.
- iii) The Appellant shall continue to pay the amount of compensation so fixed on or before 10th day of every month during pendency of the Appeal.
- iv) The amount of compensation be paid in the name of Respondent No.2A.

6 With the above directions, the Civil Application is disposed of.

(SANDEEP V. MARNE, J.)

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by
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KATKAM
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