

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2173 OF 2023
IN
CIVIL REVISION APPLICATION NO.210 OF 2017

SHARADA
RANGNATH
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Trade Centre Developers And
Builders Pvt. Ltd. Thr, Its Managing
Shri. Ishwar Chandulal Parmar ... Applicant

IN THE MATTER BETWEEN

Bharat Petroleum Corporation Ltd. &
Anr. ... Applicants

V/s.

Trade Centre Developers & Builders
Private Ltd. ... Respondent

Mr. Drupad S. Patil for Applicant in IA/2173/2023 and for
Respondent in CRA/210/2017.

Mr. S. R. Page for Original Applicant in CRA/210/2017 a/w Adv
Archana Joglekar and Adv. Ruchi Umrotkar for Applicant.

CORAM : RAJESH S. PATIL, J.

DATED : 31 JANUARY 2024

P.C.:

INTERIM APPLICATION NO.2173 OF 2023

1. Mr. Patil seeks liberty to amend the prayer clause by adding
the word along with accrued interest. Liberty as prayed is granted.
Amendment to be carried forthwith.

2. This Interim Application is filed by original plaintiff seeking a

direction from this Court to permit them to withdraw the amount of compensation deposited by Respondent / Corporation in this Court. The said amount was deposited in compliance of Order dated 12 September, 2017 and 15 March 2018, passed in Civil Revision Application No.210 of 2017.

3. For ease of reference the Order dated 12 September, 2017 and the Order dated 15 March, 2018 passed in Civil Revision Application No.210 of 2017, are reproduced hereinbelow.

Order dated 12 September 2017

“1 Heard Mr. Page for the applicants and Mr. Godbole along with Mr. Patil for the respondent.

2 In this case, the trial Court, by judgment and decree dated 19.11.2012 had dismissed the respondents Civil Suit No.139 of 2002 seeking the petitioners eviction from the suit premises. However, by the impugned judgment and decree dated 09.02.2017, the appeal Court has reversed the trial Court order of the eviction of the petitioner.

3 From the perusal of impugned judgment and decree dated 09.02.2017 it appears that the appeal Court, by adverting clause 3 (d) of the lease deed (Exh.26) has held that this clause provides for “renewal” and not for “extension”. The appeal Court has further reasoned that since renewal involves a bilateral act and the landlords had refused to renew the lease, the respondent herein had the cause of action to institute the suit in the year 2002 and such Suit, is required to be decreed.

4 The Appeal Court, in this case, does not appear to do that either adverted to or in any case, considered the impact of the provision contained in Section 5 of the Burmah Shell (Acquisition of Undertakings In India) Act, 1976 which inter alia provides, that upon expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell before the appointed day. At least prima facie, therefore, principle that the renewal involves bilateral act may not apply to the lease in question in view of the statutory provisions in Section 5 (2) of the

said Act. This is only a prima facie observation.

5 Rule.

6 There shall be adinterim relief restraining the execution of the eviction decree. However, the enquiry as directed in terms of clause 3 (b) of the impugned judgment and decree dated 09.02.2017, in the matter of ascertaining future mesne profits is not stayed and the same may be continued. Upon determination of the mesne profits, however, the decree for mesne profits shall not be put in execution without the leave of this Court.

7 The adinterim relief for stay of eviction is subject to the following conditions :

- a) The applicants to file the usual undertaking in this Court within a period of four weeks from today after service of advance copy to the learned counsel appearing for the respondent;
- b) The applicants shall deposit in this Court each month compensation @ 4 lakh per month effective from 01.03.2017 on or before the 10th day of each succeeding month. The time limit for depositing arrears shall be six weeks.

8 The aforesaid determination is only on adhoc basis taking into consideration the circumstance that the suit premises is an open plot admeasuring 10952 sq. ft., at what is described by Mr. Godbole as the “heart of Pune city”. The suit premises are located very close to the Pune railway station at Sadhu Vaswani Chowk and are utilized by the applicant for the purpose of operating a petrol service station.

9 The parties are at liberty to produce valuation reports as well as other material to assist this Court determining reasonable compensation in terms of the law laid down by the Hon’ble Supreme Court in the case of Atmaram Properties (Pvt.) Ltd. vs. Federal Motors Pvt. Ltd.
1 Such material will be considered at the stage of confirmation of adinterim relief.

10 Place this matter after six weeks for confirmation of adinterim relief and consideration the quantum of reasonable compensation.

11 Further, it is clarified that the pendency of the present Revision Application as well as grant of adinterim relief therein, will not preclude the respondentlandlord from prosecuting Civil Suit No.308/2013 instituted in the

Court of Small Causes at Pune, for eviction of the applicant”.

Order dated 15 March 2018

“Heard Mr. Page, learned Counsel for the applicants and Mr. Godbole, learned Senior Counsel for the respondent at length.

2. By order dated 12.09.2017, after hearing both sides, this Court admitted the C.R.A. by issuing Rule and issued rule on interim relief. This Court granted ad-interim order staying the execution of the eviction decree subject to applicants - (i) filing usual undertaking within a period of four weeks and (ii) depositing in this Court each month compensation @ Rs.4,00,000/- per month effective from 01.03.2017 on or before 10th day of each succeeding month. The arrears of compensation were ordered to be deposited within six weeks.

3. Mr. Page states that he has complied conditions stipulated in paragraph 7 of that order. He invited my attention to the affidavit made by the applicants as also the valuation report dated 13.10.2017 prepared by Nitin M. Lele, Government Registered Valuer. As per that report, the Valuer has opined that Rs.2,73,000/- per month will be a reasonable compensation.

4. As against this, Mr. Godbole has invited my attention to the affidavit made on behalf of the respondent and the valuation reports submitted by Mandar A. Gadre & Associates, Government Registered Valuer opining that Rs.6,74,000/- per month will be a reasonable compensation. Mr. Godbole submitted that the location of the suit premises is just 500 meters away from Pune Railway Station and is located near Sadhu Vaswani Chowk and the office of the Income Tax Commissioner. The location of the plot is very strategic with reference to the Pune Railway Station and the PMT Bus depot which are very close i.e. less than 1 km. The entire area is well developed with mainly commercial buildings having show room / shop, hotels and restaurants and Nucleus Mall. He, therefore, submitted that the compensation suggested by the respondent's valuer is a reasonable compensation and the applicants maybe directed to deposit the amount as per that valuation.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. On one hand, applicants are claiming that the reasonable compensation is Rs.2,73,000/- per month and on the other, respondent is claiming that Rs.6,74,000/- would be a reasonable compensation. In the

case of Atma Ram Properties (Pvt.) Ltd. Vs. Federal Motors Pvt. Ltd., 2005 (1) SCC 705, the Apex Court has observed that while granting an order of stay under Order XLI, Rule 5 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal insofar as those proceedings are concerned. Robust common sense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record – all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on.

6. In the case of State of Maharashtra Vs. Super Max International Private Limited, (2009) 9 SCC 772, the Apex Court has referred to the decision of Atma Ram Properties Pvt. Ltd. (supra) and observed that while fixing the amount subject to payment of which the execution of the order / decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

7. Applying the tests laid down in the aforesaid decisions, in my opinion, Rs.4,00,000/- per month as proposed by this Court at the time of admitting the C.R.A. is a reasonable compensation. Hence, Rule on ad-interim order is confirmed subject to the conditions stipulated in paragraph 7 of the order dated 12.09.2017. It is made clear that the enquiry of mesne profits is not stayed by this Court.

8. Call for R & P. To be heard along with Writ Petition No.6458 of 2001”.

4. The plaintiff had filed R.A.E. & R suit, in the year 1998 against the Defendant / Corporation (for short “the first suit”). The said suit was filed under the Bombay Rent Act for eviction. The Trial Court passed a decree of eviction. However, an appeal filed by the Defendant / Corporation was allowed. The plaintiff thereafter preferred Writ Petition No.6458 of 2001 against the judgment and Order passed by the Appellate Court, before this Court. The said Writ Petition is admitted and is pending for hearing.

5. In the meantime, the Plaintiff / Landlord filed a second suit on 1 March 2002 being Civil Suit No.139 of 2002. The second suit was filed after the Maharashtra Rent Control Act came into existence and the Defendant / Corporation had no protection under the said act as per the case of the Plaintiff / Landlord. The second suit was filed under Section 41 of the Provincial Small Cause Courts Act 1887. By Judgment and Order dated 19 November, 2012 the said suit filed for eviction under Section 41 was dismissed. Hence, the Plaintiff / Landlord preferred an appeal before the District Court, Pune. By Judgment and Order dated 9 February, 2017 the appeal filed by Plaintiff / Landlord was allowed.

5A. The Defendant / Corporation thereafter challenged the Judgment and decree passed by the District Court, by way of Civil Revision Application No.210 of 2017. This Court by its Order dated 12 September, 2017 admitted the Civil Revision Application subject to certain conditions. This Court further directed the Defendant / Corporation to deposit in this Court every month a compensation at the rate of Rs.4,00,000/- per month from 1 March, 2017. By a further Order of this Court on 15 March 2018 the said amount payable at the rate of Rs.4,00,000/- was to be paid till pendency of the Civil Revision Application.

6. In the meantime, since the Plaintiff / Landlord had not received the possession of suit premises he filed third suit being Civil Suit No.308 of 2013, under Section 41 of the Provincial Small Cause Courts Act. The third suit filed by the Plaintiff / Landlord was decreed by the Trial Court. An Appeal preferred by the

Defendant / Corporation was also dismissed so also a Writ Petition filed in this Court by the Defendant / Corporation was also dismissed on 2 December, 2022.

7. Both the parties agree that thereafter on 4 February 2023 the possession of the suit premises has been received by the Plaintiff / Landlord by executing the decree in the third suit.

8. The controversy now is about the mesne profit to be payable by the Defendant / Corporation to the Plaintiff / Landlord. The dispute between the parties is whether such a mesne profit payable should be from the filing of the second suit i.e. 1 March 2002, OR from the date of the filing of the third suit i.e. 10 September, 2013.

9. I have heard both the Counsel today. The interim application seeks a prayer of withdrawal of the amount which has been deposited by the Defendant / Corporation as per the directions given by the Court on 12 September, 2017. Admittedly after dismissal of the Writ Petition on 2 December, 2022, in the proceeding arising out of third suit the Defendant / Corporation has not deposited any amount by way of compensation as per the directions given by the Court in Civil Revision Application No.210 of 2017, arising out of the proceeding of the second suit.

10. According to me, either way even if it is presumed for a second that the mesne profit would be payable from the filing of the third suit i.e. from the year 2013, the said amount would be payable from 2013 till February 2023. The amount deposited by the Defendant / Corporation is only from 1 March 2017 till December, 2022. The suit premises is admeasuring 10,952 sq.ft

situated at Cannought Road, Sadhu Vaswani Chowk, Pune. In the Order dated 12 September 2017, this Court while fixing the amount of Rs.4,00,000/- per month, in para 8 has stated that it has noted the submission of the counsel for the Plaintiff / Landlord that the suit premises is in the “heart of Pune city”. This Court further in its Order dated 15 March 2018, in para 7 have noted that a sum of Rs.4,00,000/- payable per month at the time of admitting the Civil Revision Application is a **reasonable compensation**. Having regard to all these circumstances, I am of the view that, suffice would be the purpose if the Plaintiff / Landlord (Trade Centre Developers And Builders Pvt. Ltd.) are allowed to withdraw along with accrued interest the amount deposited by Defendant / Corporation, subject to filing an undertaking within a period of one week from today, thereby stating that in case this Court after deciding the Civil Revision Application, comes to a finding that the Plaintiff / Landlord should return back certain amount as quantified by this Court, the Plaintiff / Landlord will return back that amount along with interest if any granted by this Court.

11. Hence, Interim Application is allowed in terms of prayer clause (a) of the Interim Application subject to filing an undertaking as mentioned above. Amended Prayer clause (a) of the Interim Application reads as under:-

(a) The Applicant be permitted to withdraw amount of compensation deposited by Respondents in this Hon'ble Court in compliance of orders dated 12.9.2017 and 15.3.2018 **Exhibits A and B** to this Application, along with accrued interest.

12. Interim Application is accordingly disposed of.

CIVIL REVISION APPLICATION NO.210 OF 2017

1. Civil Revision Application No.210 of 2017 along with Writ Petition No.6458 of 2001 to be placed for hearing on 28 February 2024, at 2:30 pm.

(RAJESH S. PATIL, J.)