



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1038 OF 2022

Apsara Development Corporation.

...Petitioner.

Versus

Rafique Siddique.

...Respondent.

Mr. Akash Rebello, Mr. Vachan Bodke, Ms. Ankita V., Mr. Vaibhav Gaikwad, Mr. Hitesh Gupta i/b M/s. V & M Legal for the petitioner.

Mr. Rakesh Mishra for respondent.

Coram : Sharmila U. Deshmukh, J.

Reserved on : December 18, 2023.

Pronounced on : January 11, 2024.

ORDER :

1. By this petition filed under Article 227 of the Constitution of India, the petitioner challenges the order dated 20th March 2021 passed in Revision Application No.3 of 2021 setting aside the order of trial Court directing the respondent to pay monthly compensation of Rs.20,000/- from the date of filing of suit, i.e. 2nd July 2014 till the final disposal of suit.

2. The facts briefly stated are that L.E. Suit No 180/196 of 2014 was instituted seeking *inter alia* recovery of possession of the suit premises from the respondent. The petitioner claims to be the

owner of residential flat being Flat No.G-11, situated in Om Sai Pratiba CHS Ltd, Dahisar, Mumbai, stated to have been constructed by the petitioner. That, during the construction of building, the respondent was residing in the vicinity and had developed relations with one of the partners of petitioner and requested the petitioner to provide one small place to start his own business. That, on humanitarian ground, the respondent was permitted to use the small garage situated on ground floor of building "E" which was adjacent to the building in which the suit premises is situated, without any compensation till the respondent established his business. That, garage was given to the respondent in or around the year 2002, on purely gratuitous licence basis and in the year 2005, respondent handed over vacant and peaceful possession of the garage. That, there was another request by the respondent to let out a residential flat for temporary period so as to enable the respondent to acquire a suitable residential accommodation. That, considering the past conduct of respondent of handing over the possession of garage, petitioner decided to permit the respondent to use the suit flat for temporary period purely on gratuitous license basis from the year 2005. That, the electricity bills and maintenance bills are issued in the name of petitioner and paid by the petitioner. From the year 2007, the petitioner started demanding possession of suit flat. That,

vide notice dated 30th May, 2014, the Administrator of the Society has informed the petitioner that some unauthorised renovation work is being carried out by the respondent. That, vide notice dated 8th February 2014, the petitioner terminated the gratuitous license and called upon the respondent to hand over the possession.

3. The suit came to be resisted by the respondent by filing written statement claiming that the respondent was working with the petitioner as supervisor during the construction of building where the suit premises is situated since the year 1986. That, the respondent expressed the need for ownership basis flat in the building and as per mutual oral understanding, the purchase price was fixed at Rs.90,000/- in lump-sum to be deducted from the salary of respondent @ Rs.1,000/- per month. It is pleaded that as per the oral agreement, on payment of approximately 25% of the agreed consideration the agreement for sale was to be executed. It is pleaded that the agreement for sale was not executed by the petitioner on one pretext or the other. It is pleaded that the respondent is in peaceful possession of the suit flat since the end of 1993.

4. The suit as initially filed did not contain the prayer for mesne profits and vide order dated 12th April, 2017, the petitioner was

permitted to amend the plaint to incorporate the prayer for mesne profits. On 13th March, 2018 an application below "Exhibit-10" was taken out by the petitioner stating that the gratuitous license of respondent has been terminated on 8th February 2014 and that his occupation has been rendered unlawful since that date. That, it is necessary that the defendant be directed to pay compensation at the market rate as per the ready reckoner rate, for unlawful and illegal occupation of the premises. The application came to be resisted by the respondent. The trial Court vide its order dated 21st July 2020 held that the defendant had not paid any amount as monthly compensation despite the fact that he is in occupation of the suit premises which is admittedly owned by the plaintiff and as such assessed the monthly compensation at Rs.20,000/- from the date of suit, i.e., 2nd July 2014. As against the order of trial Court, revision application was filed. The Revisional Court by the impugned order allowed the application and quashed and set aside the order of the Trial Court.

5. Heard Mr. Akash Rebello, learned counsel appearing for the petitioner and Mr. Rakesh Mishra, learned counsel appearing for the respondent.

6. Mr. Rebello, learned counsel for the petitioner submits that

the Revisional Court after holding that the provisions of Order XV-A of CPC are applicable and resort could not be had to the provisions of Order XXXIX Rule 10 of CPC has thereafter declined to apply the provisions of Order XV-A of CPC. He would submit that deposit could also be directed under the provisions of Order XXXIX Rule 10 of CPC and the documents on record sufficiently establish that the petitioner was the owner of the premises and the respondent was in unlawful occupation after the termination of gratuitous licence. He submits that even if there is a dispute, the admitted position is that the petitioner is the owner and the premises are in the use and occupation of respondent and, as such, there is implied liability to pay. He would further submit that even the gratuitous licensee can be directed to deposit interim compensation. In support of his submissions, he relies upon the decision of this Court in ***Dr. Nirmala Sohanlal Pandit v. Madhu Sudan Kumar Mangalore Jarappa [dtd 26th June 2019 in W.P.No.11620 of 2017], Selvel Publicity Consultants Pvt. Ltd v. Altaf-ul-Rahim [2015 SCC OnLine Bom 3188]*** and ***Raghubir Rai v. Prem Lata [2014 SCC OnLine Del 3045]***.

7. *Per contra*, Mr. Rakesh Mishra, learned counsel for the respondent would submit that case of the petitioner is that the premises has been handed over in the year 2005, which is *prima facie*

falsified by the documents produced on record. He points out various documents produced on record such as the gas connection issued in his name by the HPCL at the suit premises which is of the year 1994, the driving licence, and the bank accounts which have been opened in the year 1995. He would further point out that at the time of passing of the order of interim compensation, there was no relief of mesne profits claimed in the proceedings and subsequently the application was made. He would further submit that it is the specific case of the respondent that he had purchased the premises for which a sum of Rs.1,000/- per month was deducted from his salary and as such there is claim of ownership which is required to be adjudicated after leading evidence. In support of his submissions, he relies upon the decision in the case of ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria [(2012) 5 SCC 370]***.

8. Considered the submissions and perused the record.

9. The petitioner seeks eviction of the respondent on the ground that gratuitous license of the respondent has been cancelled whereas the respondent has put up a case of oral agreement of sale. In support of its case, the petitioner has produced the copy of share certificate, electricity bill of the year 2013, society bill of the year

2013 and the receipt evidencing payment made to Society to indicate that the suit premises stand in the name of petitioner. The respondent has produced the document showing installation of gas connection of the year 1994-95, bank accounts opened in the year 1994-95 etc to indicate that he is in possession of the premises since the year 1994. The documents produced by the respondent *prima facie* indicate the possession of respondent since the year 1994-1995. However, it is the nature of possession which is disputed. Admittedly the suit premises still stands in the name of petitioner and the right of the parties will be determined after evidence has been led.

10. The application below Exhibit 10 filed by the petitioner sought the following relief :

"a) *For order and direction against the defendant to pay to the plaintiffs to deposit in this hon'ble court with liberty to withdraw the same from time to time the amounts due towards monthly compensation at the market rate as per ready reckoner rate and otherwise for the period from date of termination till filing of the suit and thereafter during pendency of the suit till decree and thereafter till recovery of possession without prejudice to the plaintiff's right to mesne profits and in terms of the schedule annexed hereto:*

b)....

c)....."

11. It is pleaded that the premises were permitted to be used

gratuitously and after termination, the respondent has been using the suit premises free of charge and the Plaintiffs have to pay the monthly outgoings towards the society maintenance as well as other charges. Relying on copy of Ready Reckoner rate, interim compensation @ Rs 35,508/- per month was sought from date of suit till decree and thereafter till recovery of possession without prejudice to claim for mesne profits.

12. The submission of Mr.Rebello, learned counsel for the petitioner is that the provisions of Order XV-A will apply or in any case resort could be had to Order 39 Rule 10 of CPC to direct deposit. In that context it will be profitable to first refer to the provisions of Order XV-A of CPC which reads thus:

"Order XV-A

[Bombay].– Insert the following as Order XV-A before Order XVI:–
STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule

(2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.

Explanation.— The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule.”

13. Bare reading of Order XV-A makes it evident that the provision can be invoked to seek deposit at the interim stage of such amount as the Court may direct on account of arrears up to the date of the order and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. Order XV-A operates at the interim stage to grant benefit of deposit to the landlord during the pendency of proceedings for eviction where the suit premises is in possession of the tenant.

14. The trial Court by its order dated 21st July 2020 observed that the Defendant has not paid any amount of compensation

despite the fact that he is in occupation of the premises which is admittedly owned by the Plaintiff. The Trial Court did not accept the quantum of Rs.35,508/- per month and directed monthly compensation to be paid @ Rs 20,000/- from the date of filing of suit.

15. The Appellate Court by the impugned order rejected the application holding that the provisions of Order XV-A apply to the suit for eviction between lessor or licensor and lessee or licensee and as Order XV-A is inapplicable to the facts of the instant case as there is no agreed rent or license fee, resort could not be had to the provisions of Order 39 Rule 10 of CPC.

16. In this context it will be beneficial to refer to the decision of learned Single Judge of this Court in ***Shreeprasad R. Jamdar v. Shashikala Prabhakar Nandarni [AIROnline 2019 Bom 481]***. In that case the learned Single Judge was considering the challenge to the grant of compensation under Order XV-A in respect of gratuitous license and the case of Defendant was that he had paid certain cash to the original owner who had agreed to sell the suit premises to him. After considering Order XV-A of CPC, the learned Single Judge held that the Court is empowered to issue direction to the Defendant to deposit such amount as the Court may direct on account of arrears upto the date of order and negated the objection of applicability of

Order XV-A to gratuitous licensee. The learned Single Judge held that the Courts were not justified in directing the deposit of arrears of compensation from the date of filing and modified the order to direct deposit from date of application. The Special Leave Petition preferred against the decision of this Court was rejected by the Apex Court.

17. The facts of ***Shreeprasad R. Jamdar (supra)*** being identical to the facts of present case, the decision is squarely applicable to the present case. In my view, the Appellate Court misinterpreted the provisions of Order XV-A of CPC and declined to apply Order XV-A of CPC for the reason that the provision comes into play only where there is *prima facie* evidence to show the agreed rent or license fee. This Court in ***Shreeprasad R. Jamdar*** (supra) has held that Order XV-A empowers the Court to issue direction to deposit such amount towards arrears upto the date of order. The Appellate Court misinterpreted the nature of relief claimed in the interim application which was for interim compensation and construed the same as interim mesne profits/interim compensation/damages which requires inquiry as to the unlawful occupation of Defendant.

18. In the case of ***Dr. Nirmala Sohanlal Pandit (supra)***, the application by the plaintiff for a direction of compensation by way of

interim relief was rejected by the trial Court. In that case, the contention of plaintiff was that the defendants are gratuitous licensee. The trial Court rejected the application on the ground that the plaintiff has claimed compensation from 1st September 1986 till the disposal of suit and the payment of mesne profits at market rate from the date of termination of license from September 1986 and that under Order XX Rule 12 of CPC it has to be adjudicated after inquiry as per order on final adjudication. Learned Single Judge of this Court held that trial Judge had committed an error as the relief claimed was an interim relief and that the trial Judge should have proceeded to decide the application under Order XV-A of CPC. Learned Single Judge remanded the matter to be decided by the trial Judge by treating the application as an application under Order XV-A of CPC. In the instant case, the Appellate Court has treated the relief for interim compensation as one for interim mesne profits and has rejected the application, which is unsustainable in view of the decision in ***Shreeprasad N.Jamdar***(supra) and ***Dr. Nirmala Sohnlal Pandit*** (supra).

19. The Delhi High Court in the case of ***Raghubir Rai*** (*supra*) has held that Order XV-A of CPC vests in the Court power for issuing direction for deposit and discretion is vested to issue “such amount”

as the Court may direct. The Delhi High Court noted the distinction between Order 39 Rule 10 of CPC and Order XV-A that the word “admitted” is conspicuous by its absence in Order XV-A. The Delhi High Court held that in a suit between the owner of immovable property and an unauthorized occupant, who though may not be liable to be ejected immediately without trial, but who on preponderance of probabilities may not be found to have a right to continue in possession of the property, Order XV-A empowers the Court to direct the defendant to deposit during the pendency of suit such amount as may appear to be reasonable, to safeguard the right of the owner of property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken up by the defendant in unauthorized occupation.

20. Though the decision of Delhi High Court is not binding on this Court, the same has persuasive value. It needs to be noted that similar view has been taken by learned Single Judge of this Court in ***Shreeprasad N.Jamdar***(supra) and ***Dr. Nirmala Sohnaalal Pandit*** (supra). I am respectfully bound by the said decisions.

21. The order of the Appellate Court in light of the decisions noted above is clearly unsustainable and is liable to be quashed and set aside. In the present case, the petitioner had claimed a sum of Rs

35,808/- per month as interim compensation based on the Ready Reckoner Rate and the Trial Court had granted Rs.20,000/- per month as interim compensation which quantum was not challenged by the petitioner. In case of ***Shreeprasad N.Jamdar***(supra), the learned Single Judge had modified the order of grant of interim compensation from the date of filing of suit to the date of application. In the present case also, the Trial Court has granted the interim compensation from the date of filing of suit. The relief claimed being in the nature of interim compensation, there is no justification for granting the same from the date of filing of suit. Accordingly, the interim compensation is required to be deposited from the date of application for interim compensation.

22. In view of the discussion above, petition stands partly allowed. The impugned order of the Appellate Court dated 20th March, 2021 is hereby quashed and set aside. The Defendant is directed to deposit the arrears of compensation in the Small Causes Court @ Rs 20,000/- per month from the date of application. The arrears of compensation to be deposited within a period of six months from today. The Defendant is directed to continue to deposit the interim monthly compensation @ Rs.20,000/- on or before the 15th day of each succeeding month from February, 2024

till the disposal of suit. The petitioner will not be entitled to withdraw the amount deposited as interim compensation and the same will be subject to the final judgment to be passed in the suit.

[Sharmila U. Deshmukh, J.]