

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7423 OF 2024

Ramlal Varajlal Barot

...Petitioner

Versus

Rajnik Ishwarlal Barot and Ors.

...Respondents

...

Mr. M.A. Khan *with Ms Dipti Mehta and Mr. Afnan Husain for the Petitioner.*

Mr. Vineet Naik, *Senior Advocate with Mr. Nilesh Modi and Mr. B.N. Jadhav i/b. M/s. Rustamji & Ginwala for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

DATED : 11 JUNE 2024.

PC:

1. The challenge in the present petition is to the order dated 15 March 2024 passed by the Appellate Bench of the Small Causes Court at Mumbai. By the impugned order, the Appellate Bench has stayed the execution and operation of the judgment and decree dated 31 August 2023 passed by the Small Causes Court in L.E. Suit No.57/73 of 2009 till disposal of the appeal subject to the Petitioner/Appellant depositing interim compensation in respect of suit premises @ Rs.50,000/- per month from the date of the Suit till 30 March 2024 in two equal installments on or before 10 April 2024 and 10 May 2024. Further condition is for the Appellant to continue to deposit compensation in respect of the suit premises @ of Rs.50,000/- per month w.e.f. 1 April 2024 and onwards till disposal of the appeal on or before 10th day of each succeeding month.

2. Mr. Khan, the learned counsel appearing for the Petitioner would raise two principal objections to the order dated 15 March 2024. Firstly, he would submit that the quantum of interim compensation of Rs.50,000/- per month fixed by the Appellate Bench is excessive. Secondly, Mr. Khan would submit that even if some interim compensation is payable by Petitioner in respect of the suit premises during pendency of the appeal, such payment would be from the date of the decree and not from the date of filing of the Suit. Mr. Khan would rely upon judgment of the Apex Court in *M/S. Atma Ram Properties (P) Ltd vs M/S. Federal Motors Pvt. Ltd., (2005)1 SCC 705*, and *State of Maharashtra vs. Super Max International Pvt. Ltd. LAWS (SC 2009 852)*. According to Mr. Khan, during pendency of the appeal against a decree for eviction the tenant can be made liable to pay mesne profits or compensation for use and occupation of the premises only from the date of the decree and not from the date of the Suit.

3. *Per contra* Mr. Vineet Naik, the learned senior counsel appearing for Respondent /plaintiff would oppose the petition and submit that the Suit was filed for ejectment of gratuitous licensee. Right to occupy premises come to an end immediately upon service of notice and therefore Petitioner became liable to pay mesne profits /compensation from the date of service of notice and in any case, from the date of filing of the Suit. Mr. Naik would submit that the Appellate Bench has rightly directed deposit of interim compensation from the date of filing of the Suit. Mr. Naik would further submit that suit was originally filed in this Court in the year 2000 and the same subsequently came to be transferred to the Small Causes Court and was registered as L.E. Suit No.57/73 of 2009. Mr. Naik would therefore

submit that interim compensation will have to be deposited by Petitioner from the date on which suit was initially lodged in this Court. He would submit that considering the location of the suit premises, the quantum of interim compensation need not be disturbed.

4. I have heard the submissions canvassed by the learned counsel for the respective parties.

5. Perusal of the decree dated 31 August 2023 passed by the Court of Small Causes Court would indicate that in addition to directing to Defendant to handover possession of the suit premises, the Small Causes Court has directed that the Plaintiffs shall be entitled for the enquiry of the mesne profits under Order 20 Rule 12 of the CPC, 1908. Thus, in respect of the mesne profits during pendency of the Suit, an enquiry is already directed to be conducted. In my view, upon conduct of such enquiry, the exact entitlement of the Plaintiffs towards mesne profit in respect of the suit during pendency of the suit would be ascertained. In that view of the matter, it was inappropriate for the Appellate Bench of the Small Causes Court to speculate and fix such amount of mesne profits payable during pendency of the suit in the form of interim compensation @Rs.50,000/- per month.

6. Considering the facts and circumstances of the present case in my view end of justice would meet if Petitioner/Defendant is directed to deposit interim compensation in respect of the suit premises from the date of the decree with further direction to continue to deposit the same during the pendency of the appeal. So far as the mesne profits in respect of the suit premises during pendency of the suit is concerned, enquiry under Order 20

Rule 12 of the Court can continue during pendency of the appeal. Such enquiry would enable the Appellate Bench to ascertain the exact amount of mesne profits in respect of the suit premises. Once the amount is ascertained, the parties would be at liberty to apply before the Appellate Bench to pass a direction with regard to payment /deposit or otherwise of the said determination of amount of mesne profits.

7. So far as the quantum of interim compensation is concerned, I do not find any valid reason to interfere in the same considering the fact that the suit premises are located at prime location of Marine Drive at Mumbai.

8. I accordingly proceed to pass the following directions:-

(a) Order dated 15 March 2024 passed by the Appellate Bench of the Small Causes Court shall stand modified to the following extent:-

(i) Execution and operation of the Judgment and Decree dated 31 August 2023 passed by the Court of Small Causes in L.E. Suit No.57/73 of 2009 shall remain stayed (except para 3 of operative direction) during pendency of the appeal subject to the Petitioner/Defendant depositing in the Court of Small Causes interim compensation in respect of the suit premises @ Rs.50,000/- per month from the date of Decree i.e. 31 August 2023 till June 2024 in two equal installments on or before 30 June 2024 and 31 July 2024.

(ii) Petitioner/Defendant shall continue to deposit the interim compensation @ Rs.50,000/- per month for the month of

July 2024 onwards till the decision of the appeal on 10th day of each succeeding month.

(b) The operative direction No.3 of the Decree dated 31 August 2023 is not stayed and the Plaintiffs shall be at liberty to file appropriate proceedings for conduct of enquiry into mesne profits under Order 20 Rule 12 of the Code. The Trial Court shall conduct the said enquiry notwithstanding pendency of the appeal and ascertain the amount of mesne profit payable in respect of the suit premises till passing of the decree dated 31 August 2023.

(c) On ascertainment of amount of mesne profit payable during the pendency of the suit, parties shall be at liberty to apply before the Appellate Bench of the Small Causes Court either for deposit or for stay on payment of the said amount, as the case may be.

(d) Paragraphs 3, 4 and 5 of the operative part of the order dated 15 March 2024 passed by the Appellate Bench of the Small Causes Court shall continue to operate

9. With the above directions, Writ Petition is disposed of.

10. Parties to act on an authenticated copy of this order.

[SANDEEP V. MARNE, J.]