

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11250 OF 2024

1. Sujat Gajanan Parkar
2. Ms Megha Ramesh Sharma *...Petitioners*
V/s.

Mrs. Zarin Irshad Moloobhai *...Respondent*

Mr. Suresh Kamble *i/b. Ms Nikita Kamble for the Petitioners.*
Mr. Jaydeep Deo *with Mrs. Bijal Chowlera for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 20 August 2024.

P.C. :

1) Challenge in the present Petition is to the order dated 12 June 2024 passed by the Appellate Bench of the Small Causes Court fixing the quantum of interim mesne profit to be paid by the Petitioner/Obstructionist at Rs.1,07,625/- per month.

2) It must be observed at the very outset that the Appellate Bench has committed an error in directing deposit of amount of interim mesne profit of Rs.1,07,625/- from the date of Obstructionist notice, ignoring the fact that it was exercising revisionary jurisdiction to test the correctness of order dated 17 November 2022 passed in Revisional Application No.34 of 2023 filed by Petitioners/

Obstructionists. The learned Single Judge of the Small Causes Court had directed deposit of interim mesne profits from the date of the order i.e. 17 November 2022. In Revision preferred by the Obstructionists, the Appellate Bench could not have improved the order dated 17 November 2022 by directing deposit of interim mesne profit from the date of obstructionist notice. To this extent the order passed by the Appellate Bench dated 12 June 2024 suffers from an obvious error. It is therefore, clarified that the amount of interim mesne profit of Rs.1,07,625/- shall be payable only from 17 November 2022.

3) After arguing the Petition for some time, Mr. Kamble, the learned counsel for the Petitioners would submit that Petitioner No.2-Megha Ramesh Sharma shall handover possession of part of the suit premises, which is in her occupation by 31 August 2024. The statement is made on instructions taken from Petitioner No.2-Megha Ramesh Sharma, who is personally present before the Court. Statement is accepted as an undertaking given to the Court. Accordingly, Petitioner No.2- Ms Megha Ramesh Sharma shall handover possession of the cabin in her occupation to the Plaintiff on or before 31 August 2024.

4) So far as Petitioner No.1-Sujat Gajanan Parkar is concerned, it is submitted that he possesses cabin admeasuring only 90 sq.ft. and he does not have any objection if the rest of the portion of the suit premises (except 90 sq.ft., which is in his possession) is taken in possession by the Plaintiff. A statement is made on behalf of Petitioner No.1-Sujat Gajanan Parkar, who is personally present before the Court that he shall handover keys of the main entrance door

to the Plaintiff on or before 31 August 2024 and shall not obstruct the Plaintiff from using and occupying rest of the suit premises except the cabin admeasuring 90 sq.ft. (in his occupation) and the space needed for accessing his cabin.

5) Mr. Deo, the learned counsel appearing for Plaintiff, on instructions makes a statement that entry of Petitioner No.1 to the cabin in his occupation from the main door of the suit premises shall not be obstructed in any manner and that Petitioner No.1 shall always be free to use the portion of the suit premises purely for the purpose of entry and exit to cabin in his occupation. Plaintiff has agreed to shift door of the cabin of Petitioner No.1 so as to allow him direct access from the main entrance of the suit premises and the necessary repairs.

6) So far as the interim compensation is concerned, since the same is liable to be deposited from 17 November 2022, it is in respect roughly 21 months upto August 2024. The amount of interim compensation in respect of the suit premises admeasuring 525 sq.ft. @ Rs.205 - sq.ft. for 21 months comes to Rs.22,00,000/- approximately. The share of each of the Petitioners in respect of the said amount of Rs.22,00,000/- comes to Rs.11,00,000/-. Since Petitioner No.2 has handed over possession of her cabin to Plaintiff and has agreed not to claim any further rights in respect of the same, Mr. Deo, after taking instructions from his client, has agreed that the amount of final mesne profit in respect of Petitioner No.2 shall be only Rs.9,00,000/-. The said concession is made by the Plaintiff only on account of the fact that Petitioner No.2 is not engaging Plaintiff in any further litigation. Mr. Kamble would submit that Petitioner No.2 shall pay the said amount

of Rs.9,00,000/- to the Plaintiff on or before 31 August 2024. This statement is also accepted as an undertaking given to this Court.

7) So far as Petitioner No.1 is concerned, he shall deposit amount of Rs.11,00,000/- in Small Causes Court on or before 31 August 2024. In respect of the period from September-2024 Petitioner No.1 shall deposit amount of Rs.23,985/-(calculated @ Rs.205/- per sq.ft. per month for area of 117 sq.f.t) each month before the Small Causes Court during pendency of the obstructionist proceedings.

8) The amount deposited by Petitioner No.1 before the Small Causes Court is permitted to be withdrawn by the Plaintiff.

9) With the above arrangements nothing further remains to be adjudicated in the present Petition. Writ Petition is accordingly disposed of.

[SANDEEP V. MARNE, J.]