



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4563/2023

Pravin Mahadeorao Mohod and anr. Vs. Rajendra Bhimrao Shingane

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. S. Patil, Advocate for petitioners.
Ms S. O. Tapadia, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATE : 13.08.2024

Heard.

2. Challenge is to the order dated 01.07.2023 passed by District Judge – 1, Amravati. By the aforesaid order, the District Judge in the appeal filed against the judgment and decree of the Trial Court, has stayed the judgment and decree, subject to the condition that the appellant shall deposit Rs.20,000/- per month from the date of passing of the decree till decision of the appeal

3. Having heard both sides and having gone through the record, it appears that the respondent-landlord succeeded in obtaining decree on the ground of bona fide need of the suit house. The suit was filed in the year 2016. At the relevant time, the rent payable was Rs.1500/- per month. The tenancy commenced in the year 2009 at the monthly rent of Rs.1500/-.

4. The question is, whether the First Appellate Court was justified in directing the petitioner to deposit Rs.20,000/- per month. Both the parties have relied upon Order XLI Rule 5 of the Civil Procedure Code, 1908 (hereinafter referred to as the “Code”) in support. The provision indicates that the interest of decree holder should be protected while granting stay. The First

Appellate Court in doing so has quantified the monthly rent to Rs.20,000/-. The only reason assigned to enhance the amount from Rs.1500/- to Rs.20,000/- is current market rate of the properties and the recent trend of rental accommodations. The First Appellate Court has, however, neither disclosed the market rate nor has it disclosed the recent trend in the rent of the properties in the vicinity. It is, thus difficult to understand as to on what count the First Appellate Court has quantified the said amount.

5. Counsel for the respondent submits that the First Appellate Court is fully justified in imposing such condition in terms of Sub Rules (2) and (3) of Rule 5 of Order XLI of the Code. However, I do not find any provision in the said rule that would enable the First Appellate Court to impose such a condition. Rule 5 of Order XLI of the Code reads thus:

“5. Stay by Appellate Court.—

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation.—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

(2) Stay by Court which passed the decree.—Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provision of sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.”

6. As could be seen, sub Rule (2) provide that the First Appellate Court may stay execution of the decree on showing sufficient cause. Sub Rule (3) provides that the Appellate Court will not order stay of execution unless it is satisfied that firstly, substantial loss may be caused to the party applying for stay of execution if the order is not made. Second is that the application for stay has been made without reasonable delay and the third is that security has been given by the applicant for due performance of the decree. None of these provisions would

permit the First Appellate Court to impose the conditions like the one which has been imposed in the present case.

7. Counsel for the respondent submits that the Appellate Court has directed the petitioners to pay the amount as occupation charges. I do not find such terminology in the order. The counsel however continued to argue that once the decree is passed in favour of landlord, the tenant would be not entitled to hold the possession of the premises and in such an eventuality, he will be liable to pay occupation charges, if he continue to hold possession.

8. I do not find any support to such an argument inasmuch as it is well settled that the judgment debtor is entitled to file first appeal as of right and further filing appeal is continuation of suit, meaning thereby that until finding of Trial Court is upheld by the First Appellate Court, it will be impermissible for the decree holder to contend that the tenant's possession over the premises is either unauthorised or that he will be liable to pay occupation charges.

9. This Court, while issuing notice, vide order dated 24.07.2023 has directed the petitioners to deposit Rs.7500/- per month from the date of the decree till the date of appeal and further pending present petition.

10. The counsel for the respondent submits that while passing aforesaid order, the Court has relied upon the document submitted by the petitioner, which is prepared by the private architect. Counsel for the respondent further submits that this document was placed before the Court for the first time and,

therefore, could not have been considered to assess the value of fair rent.

11. In my view, the question of fair rent does not arise at all, the case being based on the bona fide need of the landlord. Nonetheless, considering the order passed by this Court while granting interim relief, the purpose will be served if the order is continued. Accordingly, the petitioner is directed to continue to pay Rs.7500/- per month pending appeal.

12. Put all together, the order passed by the First Appellate Court is without application of mind. The petition is accordingly partly allowed. The impugned order dated 01.07.2023 passed below Exh.-5 in Regular Civil Appeal No.106/2023 by District Judge – 1, Amravati, stands modified as under:

The order dated 06.05.2023 passed by 13th Joint Civil Judge Junior Division, Amravati in Regular Civil Suit No.168/2016, shall continue subject to the petitioners depositing Rs.7500/- per month from the date of decree till the appeal is decided.

The First Appellate Court is requested to decide the appeal, as expeditiously as possible.

No order as to costs.

(Anil L. Pansare, J.)