

CNR NO. MHSCA2-001866-2018

IN THE COURT OF SMALL CAUSES AT MUMBAI

**ORDER BELOW EXHIBIT NO.29
IN
OBSTRUCTIONIST NOTICE NO.232 OF 2018
IN
EXECUTION APPLICATION NO.260 OF 2017
IN
T.E. & R. SUIT NO.268/291 OF 2003**

1. Shri. Tilak Khetshi Shah (Deleted since deceased)
1(a) Smt. Sobhana Tilak Shah & Ors. **Plaintiffs**

Versus

B. Shantilal & Co. **Defendant**

And

1. Vipul Dhansukhlal Sanghvi & Ors. **Obstructionists**

Mr. S.M. Vyas, learned advocate for the Plaintiffs.

Mr. Rakesh H. Pathak, learned advocate for obstructionists No.1,4 & 5.

**Coram :- P. P. Naigaonkar
Judge, C.R.No.19
Date :- 18/01/2024**

ORAL ORDER :-

This is an application filed by the plaintiffs for striking out the defense of the obstructionists.

2. According to them, as per the order dated 16.10.2019 passed below Exhibit-8 obstructionists were directed to deposit interim monthly compensation charges till the disposal of the main obstruction notice. Obstructionists challenged the said order by filing Revision Application No. 321 of 2019. On 10.10.2023 the said Revision Application was dismissed on merits and the order passed by this court was confirmed. In spite of it, obstructionists till today have not complied with the said order. Therefore, defence of the obstructionist be struck off.

3. Obstructionists No.1, 4 and 5 resisted the application by filing reply at **Exhibit-31**. The obstructionists 1, 4 and 5 state that, plaintiff with ulterior motive and in order to delay proceedings has taken out above application for striking out defence of the obstructionist. The obstructionists not dealing with each and every averment and allegation made in the said application and any specific averment and allegation made in the said application not specifically dealt by obstructionists may not be deemed to have been admitted by obstructionists, unless specifically admitted by obstructionist hereinafter.

4. The obstructionists stated that, during the pendency of present obstructionist Notice, on 16.01.2019, plaintiff had filed application being Exh.8 for interim mesne profit / compensation. Vide Order dated 16.10.2019 directed the obstructionist to deposit Rs.10,00,000/- per month towards interim mesne profit / compensation from the date of application till final disposal of the main obstructionist notice. Thereafter, obstructionist No.1, 4 and 5 had filed Revision Application No.321 of 2019,

thereby challenged the said impugned order before Appellate Court, vide order dated 10.10.2023, dismissed the said Revision Application. On 18.10.2023, this Court has kept the hearing of present obstructionist notice; however, at that particular time reasoned order dated 10.10.2023 passed by Hon'ble Appellate bench has not been uploaded on the e-Court website. Resultantly, obstructionist could not able to consider the said order dated 10.10.2023 passed by the Appellate Bench. It is worth to mention here that, plaintiffs are very well aware about non-uploading of the said reasoned order on e-Court website. Despite that in order to prevent/obstruct him from challenging the said impugned order dated 10.10.2023, plaintiff deliberately with malafide intention had filed the present application to strike off the defence of the obstructionist.

5. The obstructionists stated that, the detail reasoned order dated 10.10.2023 had been digital signed on 16.10.2023 by the Hon'ble Appellate Bench. Pursuant to that, on 01.11.2023 the obstructionist had filed Writ Petition No. 13950 of 2023, thereby challenged the said order 10.10.2023 before Hon'ble Bombay High Court vide order dated 22.12.2023 directed to deposit mesne profit / compensation as Rs.15,000/- per month from 16.01.2019 in the Small Causes Court. In addition to this Hon'ble High Court also ordered to pay monthly compensation before 10 day of each succeeding months and arrears of the interim compensation to be cleared within the period of 8 weeks from the date of uploading of this order (order uploaded on 23.12.2023). In the said order dated 22.12.2023, Hon'ble High Court clearly stated that, “ All rights and contentions of both the parties are expressly kept open

including the contention of learned counsel for the petitioners that they are not liable to pay amount towards mesne profits.”

6. The obstructionist states that, in view of order dated 22.12.2023 passed by Hon'ble High Court the contentions, averments and allegations, made by the plaintiff in para references has become in fructuous and therefore does not survive. In order to abide and comply with direction given by the Hon'ble High Court, the obstructionist states that, on 02.01.2024, obstructionist have deposited mesne profit compensation of Rs.15000/- for the month of January, 2024 in the Registry of Hon'ble Small Causes Court at Mumbai. As far as the arrears of interim compensation are concern, however the same will be will be deposited by obstructionist within 8 weeks from 23.12.2023 and to that effect, obstructionist refer to and rely upon deposit receipt dated 02.01.2024 in respect of mesne profit / compensation of Rs.15000/- for the month of January, 2024 as and when produced. Obstructionist prayed for rejection of the application.

7. Heard both sides.

8. Considering the contentions and arguments of both the parties following points are arises for my determination. I have recorded my findings thereon for the reasons mentioned as under :

<u>Sr.</u> <u>No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the defense of obstructionists are needs to be strike out ?	Yes.

2. What Order ?

Application is
Allowed.

:: REASONS ::

9. **As to Point No.1 and 2** :- At the outset I would like to mention here that, it is not disputed that, as per the order dtd.10.10.2023 passed in Revision Application No.321 of 2019 below Exhibit-8 obstructionists were directed to deposit interim mesne profit/ compensation @ of Rs.10,00,000/- per month from the date of obstructionist notice till the disposal of the obstructionist notice. It is also not disputed that, obstructionists have not complied said order till today. According to plaintiffs, due to non-compliance of said order the defense of obstructionist needs to be strike out.

10. Order 39 Rule 11 of the Code of Civil Procedure contemplate the consequences of non-compliance of the order. It reads as under :-

“11. Procedure on parties defying orders of Court, and committing breach of undertaking to the Court. - (1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any default in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the default or contravention or breach is committed by the defendant or the opponent.”

11. The said provision clearly empowers the court to strike out the defense of the defendant, if he fails to comply any order. In the case in hand, obstructionist states that, in view of order dated 22.12.2023 passed by Hon'ble High Court the contentions, averments and allegations, made by the plaintiff has become in fructuous and therefore does not survive. In order to abide and comply with direction given by the Hon'ble High Court, the obstructionist states that, on 02.01.2024, obstructionist have deposited mesne profit compensation of Rs.15000/- for the month of January, 2024 in the Registry of Hon'ble Small Causes Court at Mumbai. As far as the arrears of interim compensation are concern, the liberty is given to obstructionists to deposit it within 8 weeks from 23.12.2023 and to that effect, obstructionist refer to and rely upon deposit receipt dated 02.01.2024 in respect of mesne profit / compensation of Rs.15000/- for the month of January, 2024 as and when produced. In view of order passed by the Hon'ble High Court, I do not find any merit in present the applications. The application is deserves to be rejected. Hence, point No.1 is answered in the negative and in answer point No.2 following order is passed.

: ORDER :

1. Application is rejected.
2. No order as to costs.

Mumbai
Date : 18/01/2024

Sd/-
[P. P. Naigaonkar]
Judge, C.R.No.19

Order Dictated on Computer :- 18/01/2024
 Order Checked & Signed on :- 18/01/2024