

CNR No. MHSCA10003692018

IN THE COURT OF SMALL CAUSES AT MUMBAI
(APPELLATE BENCH)

Order below Exh. 12

IN

A-1 Appeal No. 61 of 2018

IN

RAE Suit No. 1176 of 2008

Smt. Hira Laxman Wagh

: Appellant
(Orig. Deft. no.2)

Versus

Anees Ahmed Khan & anr.

: Respondents
(Orig. plff.& Deft.no.1)

Appearance :

Mr. Rohit J. Kurmi, learned Advocate for the Appellant
Respondent No.1 in person

Coram : S.T. Soor,
Additional Chief Judge
And
K. R. Rajput
Judge, Court Room No. 2

Date : 18.06.2022

ORDER : (Per S.T. Soor, Additional Chief Judge)

Heard advocate for the appellant and respondent no.1 in person on the application (Exh.12) for grant of stay to the Execution Application no. 360 of 2017 filed by respondent no.1 before the trial court in R.A.E. Suit no. 1176 of 2008.

2. Appellant is original defendant no.2, respondent no.1 is the original plaintiff and respondent no.2 is original defendant no.1

in the suit wherein Room no.1, Mohammaed Siddique Chawl, 144, Match Factory Lane, Belgrami Road, Kurla (W), Mumbai 400 070 is the suit premises.

3. The parties are hereinafter called as per their original nomenclature in the suit before the trial court.

4. Perused the application (Exh.12), reply (Exh.13) of respondent no.1 and the available record.

5. Contention of advocate for the appellant is that plaintiff has filed above suit for eviction and possession of the suit premises. Said suit was decreed by judgment and order dated 30.03.2017 against which appellant preferred the present appeal. During pendency of the appeal, the plaintiff taken out Execution Application no. 360 of 2017 before the trial court. If appellant is vacated from the suit premises, appeal shall be infructuous and ineffective. Appellant has good case on merits. If the execution application taken out by the plaintiff before the executing court made absolute, grave injustice would be caused to the appellant as she is in possession of the suit premises since last 40 years and paying rent to the plaintiff. Hence, she prayed for allowing the application.

6. In reply, respondent no.1 strongly opposed the application contending that defendant no.2 has suppressed the material facts from the court and she is in illegal possession of the suit premises. If stay is granted, it will cause substantial loss and injustice to him. On the other hand, no hardship would be caused to appellant as she is in illegal possession of the suit premises and the suit is decided on merits. Hence, he prayed for rejection of the said application.

7. It appears from the record that respondent no.1 also filed application (Exh.16) for directing the appellant to pay arrears of rent/mesne profits @ Rs. 5000/- p.m. to which appellant has filed reply at Exh.18.

8. Considering the contentions of the advocate for appellant and respondent no.1 in person on Exh.12 and 16, predecessor of this court had called the valuation report from both the parties. Accordingly, appellant filed valuation report dated 09.04.2022 and respondent no.1 also filed valuation report dated 16.03.2022 in respect of the suit premises. According to the valuation report filed by the appellant on record, the compensation/rent of the suit premises would not be more than Rs. 5038/- p.m. According to the valuation report filed by respondent no.1, mesne profits/compensation for the suit premises would not be more than Rs. 9973/- p.m.

9. Admittedly area of the suit premises is admeasuring 14.10 sq.meters. According to respondent no.1 himself, he is claiming mesne profits @ Rs. 5000/- p.m. by way of his application (Exh.16). The appellant also filed photographs of the suit premises along with the valuation report. It appears from the photographs that the suit premises is very old.

10. Order XLI, Rule 5 of the Code of Civil Procedure prescribes that the appellate court may for sufficient cause order stay of execution of decree but it is subject to sub- rule 3. As per Order XLI, sub-rule 3 of Rule 5, no order for stay of execution shall be made under sub-rule 1 unless the court making it is satisfied that substantial loss may result to the party applying for stay of execution

unless the order is made and security has been given by the applicant for due performance of such decree or order.

11. Admittedly appeal is a statutory right of a party. Appellate court has to re-appreciate the facts and law involved in the suit and it will require some time for deciding the appeal. At the same time, it cannot be ignored that the judgment and decree for eviction and possession in respect of the suit premises is passed in favour of the plaintiff but the appellant is in possession of the suit premises since long. Hence, if Execution Application no. 360 of 2017 is not stayed, appeal becomes infructuous and substantial loss will be caused to the appellant. Under such circumstances, respondent no.1/plaintiff is entitled for interim compensation/mesne profits for use and occupation of the suit premises by the appellant.

12. Considering the mesne profits claimed by respondent no.1 in application (Exh.16) and considering the valuation report of the suit premises submitted by both parties, we are of the opinion that the appellant is liable to pay interim compensation/mesne profits @ Rs. 5000/- p.m. to respondent no.1. Under the facts, circumstances and documentary evidence filed on record, we are of the opinion that following order would meet ends of justice. In the result, the following order:

ORDER

1. Application (Exh.12) is allowed.
2. Execution Application no. 360 of 2017 taken out by the plaintiff/respondent no.1 before the executing court in R.A.E. Suit no. 1176 of 2008 is stayed subject to

following conditions:

- a) Appellant/ original defendant no.2 shall deposit in the court interim compensation/mesne profits @ Rs. 5000/- (Rs. Five Thousand only) per month from the date of decree till final disposal of appeal.
- b) Appellant shall also deposit in the court arrears of rent from the date of decree till 30.06.2022 within period of 3 months from the date of this order and continue to deposit monthly interim compensation on or before 10th day of each succeeding month commencing from July 2022 till final disposal of the appeal.
- c) On such deposit being made, the office of this court shall invest the amount in fixed deposit for the period of one year in any Nationalized Bank, extendable thereafter on yearly basis till further order.
- d) Costs in cause.

I agree,

(K. R. Rajput)
Judge
C. R. No. 2
18.06.2022

(S.T. Soor)
Additional Chief Judge
C.R. No. 2
18.06.2022