

CNR : MHSCA1000082022

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

ORDER BELOW EXHIBIT 12
IN
(P) APPEAL NO. 13 OF 2022
IN
L.E. & C. SUIT NO. 281/308 OF 1996

Hardcastle & Waud Manufacturing Co. Ltd. ... Appellant
(Orig. Defendant)
V/s.

The Cricket Club of India ... Respondent
(Orig. Plaintiffs)

Mr. Karim Vakil, Ld. Advocate for Appellant.
Mr. Jayen R. Trivedi, Ld. Advocate for Respondent.

Coram : Shrikant L. Anekar, Chief Judge
And
P. R. Navale, Judge,
Court Room No.1,
Date: 16.12.2022

ORDER:- [Per P. R. Navale, Judge]:-

1. This is an application taken out by the appellants/original defendants to deposit in the court the amount at the agreed rate of Rs.9964/- every month for the period from 01.01.2022, during pendency of the appeal and until disposal thereof. According to appellants, they were depositing amount in the trial court during pendency of the suit. However, after disposal of the suit, office refused to accept the amount. Hence, appellants tried to tender the amount to the respondents by cheque. But the tender was refused and the cheque

was returned by the respondents. The appellants are claiming tenancy rights and are always ready to pay the agreed amount. Therefore, appellants prayed to allow the application for depositing of amount.

2. The application is resisted by the respondents vide reply at Exhibit 14. The respondents contended that as per the judgment and decree dated 14.12.2021 in L.E. & C. Suit No. 308 of 1996, the learned Trial Court decreed the suit and directed the defendants/appellants to handover the vacant and peaceful possession of the suit premises within 30 days from the date of decree. However, in order to traverse the said order and prolong the due process of law, the appellants have filed this malafide appeal and various applications therein to delay the interest of justice and harass the respondents. In order to cover up their illegal and unauthorised possession of the suit premises, the appellants are attempting to pay the respondent a measly amount of Rs.9,964/- as the alleged license fees for the suit premises admeasuring approximately 2491 sq.ft. in a prime locality near the Churchgate Station. The respondents have valued the suit premises by a registered Government Valuer and as per the Valuation Report, the monthly fair market rent in respect of the suit premises is amounting to Rs.6,22,750/-. Therefore, appellants are required to pay Rs.6,22,750/- per month as compensation. The respondents will suffer grave and severe losses in the event court is inclined to allow the appellant to deposit in court the measly amount of Rs.9964/- per month, which was determined between the parties in the year 1975 at the inception of the original agreement between the parties. Hence, respondents prayed to reject the prayer of the appellants' application.

3. It is to be noted that order regarding interim compensation is already passed below Exhibit – 7 while granting stay to the execution of the decree in question. As far as present prayer is concerned, appellants have already deposited the amount @ Rs.9964/- per month till December 2021 during pendency of suit before the learned trial Court. The appellants are ready to deposit the same during pendency of the appeal also. Though, it was tendered to the respondents by way of cheque in the month of January – 2022, it was refused by the respondents contending that the decree of eviction is already passed against the appellants. The grounds questioning the impugned judgment and decree, will be dealt with while hearing the appeal on merits. This court has already awarded monthly compensation @ Rs.5,00,000/- per month to be deposited by the appellants from the date of decree in view of order passed below Exh. 7 today. Therefore, allowing the appellants to deposit agreed amount of Rs.9,964/- from January 2022 till final decision of the appeal, without prejudice to the rights and contentions of both the parties, would be proper recourse. Needless to state that the respondents will be at liberty to withdraw the said amount as and when deposited by the appellants.

4. Here, the appellants have merely sought permission to deposit the agreed monthly amount during pendency of the appeal. In our opinion, there is no reason to deny the prayer of the appellants as they were already depositing the same before the trial court during pendency of the trial. Hence, the application deserves to be allowed in the interest of justice. With these observations, we pass the following order:

-: ORDER :-

1. The application Exhibit – 12 is allowed.
2. The appellants are directed to deposit the arrears of amount @ Rs.9964/- per month from January 2022 till December 2022 within three months from the date of this order, without prejudice to the rights and contentions of both the parties.
3. The appellants shall continue to deposit the monthly amount @ Rs.9964/- per month from January 2023 till final disposal of the appeal on or before 10th day of each month till final disposal of the appeal.
4. The respondents will be at liberty to withdraw the amount as and when deposited by the appellants.

Date : 16.12.2022

I agree,

[Shrikant L. Anekar]
Chief Judge
C.R. No. 1

[P. R. Navale]
Judge
C.R. No.1

Order dictated on : 16.12.2022
Order typed on : 19.12.2022
Order checked and signed on : 20.12.2022