

MHAH130001

222024



ORDER BELOW EXH.5 IN RCA No.04/2024.
(Patanjali Ayurved Ltd. through its General Manager
Nitin Janardhan Mohokar Vs. Santosh Nandu Bhange &
others)

1. By way of abovesaid appeal under section 96 r/w Order XLI Rule 1 of the Civil Procedure Code, the appellant/original defendant has taken exception to the Judgment and Decree dtd.19.01.2024 passed by Learned Civil Judge, Senior Division, Newasa in Regular Civil Suit No.412/2018 whereby the Learned Trial Court has decreed the suit for possession of encroached portion and ordered to defendant to hand over possession of 13.50 R area shown in Red colour in the map Exh.31 to the plaintiff within two months from the date of decree.
2. By way of present application below Exh.5, the appellant/defendant has prayed for stay to aforementioned judgment and decree, till final disposal of the appeal.
3. Perused the application, say Exh.14 and relevant record. Heard Shri. G.M. Sharma, the learned Counsel for the appellant and Shri. C.T. Kadam, the Learned Counsel for the respondents.
4. Learned Counsel for the appellant submitted that there is a decree for removal of encroachment and handing over possession of the encroached area. If the impugned decree could not be stayed, nothing would be remain in the appeal. The respondents/plaintiffs have filed execution proceeding. Hence, it is necessary to stay the execution,

operation and implementation of the impugned decree.

5. Though the prayer has vehemently opposed by respondents/original plaintiffs by submitting that already huge loss has caused to the plaintiffs due to encroachment by the defendant/appellant, however, the present appeal being a first appeal, there is always possibility of reversal of the decree. So also, first appellate court being the last fact finding court, it is also necessary to give a fair chance to the parties to agitate their all points on merits.

6. In such circumstances, if the stay to the execution of the impugned decree would not be granted, certainly, not only it would cause heavy and irreparable loss to the appellant, but it also creates further complications in the possible event of reversed of the decree in future. Hence, on these grounds as well, it is necessary to stay the execution, operation and implementation of the impugned order.

7. At the same time, it is necessary to consider the aspect of interim compensation payable to the decree holder, during pendency of the appeal on the basis of Celebrity Judgment of *Atmaram Properties (P) Ltd. Vs. Federal (P) Ltd., reported in (2005) 1 SCC 705.*

8. Both the parties have submitted their affidavits and documents in supporting to their contentions on the point of quantum of the compensation.

9. As per affidavit of authorized person of appellant at Exh.19,

the property is non irrigated land and there would be Rs.90,000/- to 98,000/- annual income per acre. Therefore, the annual income from alleged encroached area admeasuring 13.5 R would be near about Rs.30,875/-.

10. While as per affidavit of respondent No.3 at Exh.21, it is irrigated property and sugarcane was cultivated in the year 2017 and there would be loss of more than Rs.2,00,000/- since the period from 2017. It has also submitted that some portion of the property has been converted into non-agricultural property and hotel business is being running in the same. Therefore, the plaintiff has incurred a loss of Rs.7,80,000/- has also caused since 2017.

11. The respondents/plaintiffs have produced the N.A. orders on record. As per the same, 80 R area out of Guts No.4/1 & 4/2 totally admeasuring 2 H 5 R has been converted into N.A. which would be approximately 40 R each.

12. The respondents have made two fold submissions. They have prayed for compensation of 13.5 R out of agricultural income. Again the same area has being considered for N.A. purpose as well. Moreover, due to lack of material, it is not possible to consider as to exactly how much area out of N.A. property has been encroached. Moreover, the inquiry at this stage in respect of possible interim compensation would be preliminary one. The actual mesne profits would be decided in the execution proceeding.

As per N.A. orders, the plaintiff has converted 80 R area out of near about 2 H area in to N.A. It would be 40% of land owned by the plaintiff. Hence, considering the submissions of loss of Rs.7,80,000/- . The yearly loss would be near about 1,00,000/-. 40% of the same would be Rs.40,000/-. Now, the income out of agricultural property would be 60% out of 13 R, i.e., near about 8 R. Similarly, the total loss of income for 7 years as mentioned by the plaintiff is Rs.2,00,000/-. Loss of 1 year would be near about 27,000/- for 13 R area. Therefore, for 8 R area, it would be Rs.16,000/-. The total would be Rs.56,000/-. This is the calculation of the appellant. While as per respondent, it would be near about Rs.30,000/-. Therefore, arriving at golden mean of the same, it would be around Rs.40,000/- per annum.

13. Therefore, though the respondents have claimed a compensation at the rate of Rs.56,000/- per annum, in my view, at this preliminary stage, a compensation at the rate of Rs.40,000/- per year would be reasonable. Considering the date of filing of appeal, the interim compensation would be payable on or before 15th April of every year. The arrears of compensation should be paid within a period of one month from today. Needless to mention said compensation would be subject to final outcome of the present appeal.

13. It is also required to mention here that the appellant was directed to submit paper book vide order below Exh.1 on 23.02.2024 itself. However, till today, no steps are taken for filing of paper book. In

such circumstances, it is also necessary to direct the appellant to submit the paper book within a month from today and co-operate for disposal of the appeal within a period of four months from today. Hence, in the light of foregoing discussion, I pass the following order :

ORDER

1. Application Exh.5 in Regular Civil Appeal No.04/2024 is hereby allowed, and accordingly, the execution, operation and implementation of impugned judgment and decree dtd.19.01.2024 passed by the Learned Civil Judge, Senior Division, Newasa is hereby stayed till the final disposal of main appeal on following conditions :
 - i) During pendency and till final disposal of present appeal bearing RCA No.4/2024, the appellant shall deposit in the court the reasonable compensation at the rate of Rs.40,000/- (Rupees Forty Thousands Only) per annum, on or before 15th April of every year.
 - ii) The appellant shall pay/deposit arrears of compensation within a period of one month from today.
 - iii) Hearing of appeal is hereby expedited.
 - iv) The appellants to submit the paper book within a month from today and co-operate for expeditious disposal of the appeal within a period of four months from today, without failure.
2. This application stands disposed off, accordingly.

(Dictated and Pronounced in open court.)

Date :- 31.08.2024.
Newasa

(Vinod Y. Jadhav)
District Judge-1, Newasa
JO Code : MH002455