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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.653 OF 2022
IN
SECOND APPEAL NO. 182 OF 2018

Murgappa Channappa Holkunde
(Since Died) Through L.Rs.
Nagappa Murgappa Holkunde

... Applicant

Versus

Basappa Veerpakshappa Holkunde
and others

... Respondents

...
Mrs.Madhaveshwari S. Mhase - Advocate for Applicant
Mr.V.D. Salunke – Advocate for Respondents

....

CORAM : GAURI GODSE, J.
DATE : 15th February, 2023

PER COURT :

1. This application is filed by the respondent in second appeal praying for directing the appellants to deposit an amount of Rs.10,000/- per month till the decision of the second appeal.
2. Second appeal arises out of judgment and decree dated 7th August, 1982 passed by learned Civil Judge, Junior Division, Nilanga in Civil Suit No.249 of 1977. By the said decree, the

respondents were directed to hand over possession of the suit property to the present applicant. The said decree is confirmed by the judgment and decree dated 2nd December, 2017 passed by learned District Judge-1, Nilanga in Regular Civil Appeal No.86 of 2012. Being aggrieved by the decree passed for handing over possession, the respondents have preferred the Second Appeal No.182 of 2018. Second Appeal is admitted by order dated 23rd August, 2021 and by way of interim relief stay granted to the execution of the impugned judgment and decree.

3. By the present application, the respondent in the Second Appeal, who is a decree holder, prays for directing the respondents/appellants to deposit an amount of Rs.10,000/- per month in this Court during the pendency of the second appeal. The applicant has relied upon the decision of the Hon'ble Supreme Court in the case of *Atma Ram Properties (P) Ltd. Vs. M/s. Federal Motors Pvt. Ltd.*¹. The respondents have filed an affidavit in reply to oppose grant of any relief as prayed by the applicant. It was submitted on behalf of respondents that the dispute between the parties is not arising out of the proceedings

1 (2005) 1 SCC 705

under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (“Rent Act”), hence the law laid down by the Hon’ble Supreme Court in the case of *Atma Ram Properties* is not applicable to the present case. Hence, no relief can be granted as prayed by the applicant. It was further submitted that the prayers in the application are in the nature of seeking modification of the order dated 23rd August, 2021 by which interim relief of stay to the execution and operation of the impugned judgment and decree was granted. Learned advocate for respondents also submitted that the amount claimed by the applicant is exorbitant and baseless. Learned advocate for the applicant submitted that the applicant being a decree holder is entitled to seek relief for directing to impose conditions for continuation of the interim relief operating in favour of the respondents/appellants. In support of this submission, she relies upon decision of this Court in the case of *Shri Phiroze B. Illave and another Vs. M/s. Siemens India Ltd., and others*².

4. I have considered the submissions made on behalf of both the parties. Second Appeal is arising out of a decree for possession

passed in favour of the applicant by holding that the applicant is the owner of the suit premises and respondents are occupying the suit premises on rental basis on a yearly rent of Rs.50/-. It is the case of the applicant that he is the son of the original plaintiff and now he is 80 years of age. It is further the case of the applicant that the suit is of the year 1977 and decree was passed in the year 1982. The submission on behalf of the applicant is that due to the order of stay granted in the Second Appeal, the respondents are enjoying the suit premises free of cost and the applicant is deprived of the fruits of the decree.

5. In such circumstances, in my opinion the applicant has rightly placed reliance on the decision of the Hon'ble Supreme Court in the case of *Atma Ram Properties*. The Hon'ble Supreme Court in the said decision has laid down the principles for grant of stay under the provisions of Rule 5 of Order XLI of Civil Procedure Code ("CPC"). The Hon'ble Supreme Court has held that the power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate court, which is equitable in nature. Thus, in view of the principles laid down by the Hon'ble Supreme Court the successful party can demand

compensation for what it has lost and to grant such a relief is the inherent jurisdiction of the court. The appellate court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal. Thus, the applicant is entitled to ask for conditions to continue the order of interim stay operating in favour of the applicant and the same does not require recalling of the interim order already granted at the time of admission of the Second Appeal. Learned advocate for the applicant has thus rightly relied upon the decision of this Court in the case of *Shri Phiroze*, in which this Court has held that, granting relief on the basis of the legal position stated by the Apex Court in case of *Atma Ram Properties*, recalling of interim order is not required. Hence, I do not find any merit in the objection taken by learned advocate for the respondents.

6. The suit is of the year 1977 and at that time the agreed rent for the suit premises was Rs.50/- per year. There is dispute on the current valuation of the suit premises. Learned advocate for the applicant has placed reliance on a copy of rent agreement for claiming Rs.10,000/- per month towards deposit of amount of

compensation. Learned advocate on behalf of respondents disputes the rent agreement on the ground that the subject premises of the rent agreement is not within the vicinity of the suit premises. There are affidavits and counter affidavits filed by both the parties. In such circumstances for considering the application that is filed on behalf of the decree holder, it will be necessary to find out the current valuation of the suit property as well as possible rent that the suit property will fetch.

7. Since, there is dispute with respect to the exact possible rent amount with respect to the suit property, it will be necessary to make an enquiry with respect to the prevailing market rate. In such circumstances, it would be necessary to hold an enquiry, as to what would be the market value of the suit property, as also what would be the fair and reasonable rent that suit property would fetch. Since there is dispute with respect to the same, it will be necessary to remit the civil application to the Court of Civil Judge, Junior Division, Nilanga for holding an enquiry and submit a report to this Court as to what would be the current valuation of the suit property and what would be a fair rent/compensation. Both the parties have agreed for remitting

the matter to Trial Court for conducting such enquiry.

8. Hence following order is passed :

(i) Civil Application No.653 of 2022 is remitted to the Court of Civil Judge, Junior Division, Nilanga for holding an enquiry and submit a report to this Court as to what would be the current valuation of the suit property and what would be a fair rent/compensation.

(ii) Parties will be at liberty to produce oral as well as documentary evidence before the learned Trial Court.

(iii) Parties will appear before the Court of Civil Judge, Junior Division, Nilanga on 13th March, 2023.

(iv) Parties will not unnecessarily seek adjournment and will cooperate for early disposal of the enquiry.

(v) Office is directed to send the civil application as well as the affidavits and counter affidavits filed by both the parties in the Civil Application, to the Court of Civil Judge, Junior Division, Nilanga.

9. Present matter to be listed after receipt of the report from the concerned trial Court.

10. All the parties to act upon authenticated copy of this order.

[GAURI GODSE, J.]