

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8484 OF 2013
(arising out of SLP (C) No. 8046 of 2013)

STATE OF MADHYA PRADESHAPPELLANT(S)
VERSUS	
JAINAB ABBAS WARAWALARESPONDENT(S)

O R D E R

Leave granted.

This appeal has been preferred by the appellant (landlord) against the order dated January 24, 2013 passed by the High Court of Judicature at Bombay in Writ Petition No. 11670 of 2012.

By the impugned order, the High Court, exercising its power under Article 227 of the Constitution of India, interfered with a conditional order of stay passed by the Appellate Court and put a different condition to stay the decree passed by the Small Causes Court in favour of the first respondent.

The appellant let out flat No.3 on the ground floor of Edward Villa, 11-A, Captain Prakash Pethe Marg, Colaba, Mumbai, to one B.A. Gazdar. The said B.A. Gazdar died on January 28, 1985 and upon his death his only legal representative (married daughter), who was brought on record, became the tenant of the suit premises. According to the appellant, she was not residing in the suit premises but in her husband's house at B/1, Brightened, 1st Floor, Rongta Lane, Nepean Sea Road, Mumbai. For this reason, the appellant instituted a suit in the Court of Small Causes at Mumbai, being Suit No. 37/107 of 1991 and on the ground of bona fide need under Section 13(1)(g) of the Bombay Rent Act, 1947 seeking eviction of the defendant from Flat No.3 on ground floor, Edward Villa admeasuring 2500 sq. yards.

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The Small Causes Court, after considering all aspects of the matter, including the documents and evidence on record, decreed the suit by its judgment and order dated May 09, 2012. It granted three months' time to the defendants to handover the vacant and peaceful possession of the suit premises with further observations made therein.

Being aggrieved, the first respondent preferred appeal before the Small Causes Court (Appellate Bench) at Mumbai by filing Appeal No. 76 of 2012. A prayer was also made to grant stay vide Exhibit No.7 of 2012 filed in the said appeal. The Appellate Court, after hearing the parties, by its order dated November 21, 2012, granted conditional stay of the decree by directing the first respondent to deposit a sum of `2,35,333 per month from the date of decree. The said order was challenged subsequently by the first respondent in a petition filed under Article 227 of the Constitution of India wherein the impugned order was passed by the High Court whereunder the High Court modified the conditional stay and granted stay in favour of the first respondent on a condition that the first respondent should pay a sum of `75,000 per month from the date of decree till the final disposal of the appeal.

Mr. G.E. Vahanvati, learned Attorney General appearing for the appellant, submits that the High Court, while passing the impugned order, reduced the amount from `2,35,333 to `75,000. He has contended that such an order passed by the High Court is against the ratio laid down by this Court in State of Maharashtra & Anr. v. Super Max International Private Limited & Ors., (2009) 9 SCC 772.

Per contra, according to Mr. Arvind Kumar Sharma, learned counsel appearing for respondent No.1, she is suffering from cancer

and she is not in a position to bear

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the higher rent fixed by the Appellate Court while granting conditional stay.

On hearing learned counsel for the parties what we find is that after the conditional stay order was passed by the High Court, the first respondent filed a petition under Exhibit No.14 of 2012 wherein she requested the Appellate Court to extend the time to deposit the amount of '2,35,333 by two months on the ground that no harm or prejudice will be caused to the appellant as the amount that will be deposited will get accumulated in the Court and the appellant will be allowed to withdraw the same if she fails in the above appeal.

Immediately thereafter, the first respondent filed a petition under Article 227 of the Constitution of India wherein the impugned order was passed at the instance of the first respondent.

Similar issue fell for consideration before this Court in Super Max International Private Limited's case (supra) wherein the Court made the following observations:

"72. With the perspective thus adjusted, all the submissions made by Mr. Lalit on behalf of the appellant have a simple answer. The interim order of the High Court asking the appellant to deposit Rs.5,40,000 from the date of the decree as condition for stay of the execution of the decree of ejection has to be seen as one single package. The appellant may or may not accept the order as a whole. But it is not open to it to accept the order insofar as it stays the execution of the decree and to question the condition attached to it.

73. In an appeal or revision, stay of execution of the decree(s) passed by the court(s) below cannot be asked for as of right. While admitting the appeal or revision, it is perfectly open to the Court,

...4/-

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to decline to grant any stay or to grant stay subject to some reasonable condition. In case stay is not granted or in case the order of stay remains inoperative for failure to satisfy the condition subject to which it is granted, the tenant in revision will not have the protection of any of the provisions under the Rent Act relied upon by Mr. Lalit and in all likelihood would be evicted before the revision is finally decided. In the event the revision is allowed later on, the tenant's remedy would be only by way of restitution.'

In view of the fact that the present case of the appellant is covered by the decision of this Court and that the High Court, while exercising its power under Article 227 of the Constitution, has not pointed out any error apparent on the face of the record in the order passed by the Appellate Court and/or that the order is perverse, we have no other option but to interfere with the impugned order.

We, accordingly, allow the appeal and set aside the impugned order and restore the order passed by the Appellate Court.

No costs.

.....J.

.....J.
(V. GOPALA GOWDA)

NEW DELHI,
SEPTEMBER 23, 2013.

ITEM NO.64

COURT NO.13

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).8046/2013

(From the judgement and order dated 24/01/2013 in WP No.11670/2012 of
the HIGH COURT OF BOMBAY)

STATE OF MADHYA PRADESH

Petitioner(s)

VERSUS

JAINAB ABBAS WARAWALA

Respondent(s)

(With prayer for interim relief and office report)

Date: 23/09/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s)

Mr. G.E. Vahanvati, Attorney General
Mr. Vivek Tankha, Sr. Adv.
Mr. B.K.Satija, Adv.

For Respondent(s)

Mr. Arvind Kr. Sharma, Adv.
for Mr. Saurabh Mishra, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeal is allowed.

|(N.S.K. Kamesh)

| |(Usha Sharma)

|
|Court Master

| |Court Master

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(signed order is placed on the file)