

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 7870 OF 2014.

Shri Kishor Shamrao Jadhav .. Petitioner
Vs.
Sou.Pournima Chandrakant Mote .. Respondent

Mr.Tanaji Mhatugade, for the Petitioner.
Mr.Manmath Athalye, for the Respondent.

***CORAM: N.M.Jamdar J.
Monday 30 March, 2015***

Oral Order:

By this petition, the Petitioner challenges the order dated 7 August 2014 below Exhibit 7 in Regular Civil Appeal No.217 of 2013, passed by learned District Judge, Kolhapur.

2 The Petitioner had filed a Regular Civil Suit No.321 of 2012 against the Respondent for injunction contending that the Petitioner is tenant of the property and the Respondent is obstructing his peaceful possession. In this suit Respondent filed a counter claim seeking recovery of possession on the ground of bonafide requirement. The suit filed by the Petitioner was dismissed. Counter claim filed by the Respondent was decreed. The Petitioner was directed to pay arrears of Rs.6,000/- towards rent.

3 Thereafter the Petitioner filed an appeal in District Court Kolhapur. The learned District Judge by the impugned order directed the Petitioner to pay Rs.6,000/- per month to Respondent from date of the Judgment in the suit till disposal of the appeal and the arrears were directed to be cleared before 31 August 2014.

4 The learned counsel for the Petitioner submitted that the rent payable by the Petitioner was Rs.3,000/- and it could not have been enhanced to Rs.6,000/- by the learned District Judge, without there being any prayer for enhancement of rent by Respondent.

5 This submission is misconceived. The learned District Judge has passed an equitable order relying upon decision in the case of **Atma Ram Properties (p) Ltd. Vs Federal Motors Pvt.Ltd** reported in *2005(1) SCC 705*; in the case of **Pradeep Kumar Vs.Hajari Lal AIR** reported in *2008 Supreme Court 1689* and in the case of **State of Maharashtra and Anr. Vs. M/s Super Max International Pvt. Ltd and Ors.** reported in *AIR 2010 Supreme Court 722*. Though the learned Judge has referred the payment of Rs.6,000/- as rent, it is clearly an use of wrong word. The learned Judge had fixed the compensation, on equitable consideration. Therefore, there is no question of enhancement of rent as such.

6 The premises in question is a residential flat having four rooms situated in city of Kolhapur. Considering that I do not find that fixing Rs.6,000/- as compensation per month by the learned

District Judge is so perverse so as to warrant interference in writ jurisdiction. Nothing is placed on record to show any perversity.

7 The learned counsel for the Petitioner submitted that inspite of payment of arrears, the Respondent has taken out execution proceedings. The learned counsel for the Respondent submits that arrears have not been cleared. This issue will be considered in the execution proceedings. So far as the present petition is concerned, there is no merit in the challenge. Petition is rejected.

(N.M.Jamdar, J.)