

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 397 OF 2010
IN
WRIT PETITION NO. 5137 OF 2008

Smt. Satyabhama D. Menghani	..	Applicant/ (Ori. Respondent)
vs.		
Mrs. Punnadevi S. Kaushik (since deceased)		
1a. Shri Shashikant Kaushik	..	Respondent (Ori. Petitioner)

Mr. Madhav Jamdar for Applicant in CA and for Original Respondent in WP.

Ms Arka Navle h/f. Purvi Shah for Respondent in CA and for Petitioner in WP.

CORAM : M. S. SONAK, J.
DATE : 20 AUGUST 2015

P.C. :-

1] Heard learned counsel for the parties.

2] By this civil application, the landlord, seeks determination of reasonable compensation and directions to the tenant to deposit the same for continuing in possession on the basis of interim order restraining execution of eviction decree made by the Appeal Court on 29 March 2008. This petition was admitted on 24 September 2008 and interim relief was also granted on the same date. The civil application has been taken out on 25 January 2010.

3] Mr. Jamdar, the learned counsel for the landlord placed reliance upon the valuation report prepared by H. K. Dholakia,

Approved Property Valuers, who has stated that the market value of the suit premises would be in the range of Rs.48.83 lacs and on the said basis determined compensation at Rs.24,500/- per month. Mr. Jamdar points out that even the society dues per month are Rs.1,500/- for the last two years and prior to the same they were Rs.1,400/- per month. Taking into consideration all these aspects, Mr. Jamdar submits that directions be issued for deposit of Rs.24,500/- per month as a condition for interim relief.

4] Ms Arka Navle, the learned counsel for the respondent, at the outset stated that she has no instructions to argue this matter. However she submitted that the tenant has already purchased the suit premises and this circumstance is set out in the reply to this civil application. Accordingly, Mr. Arka submitted that in this case, no directions be made for deposit of any compensation whatsoever.

5] Having heard the learned counsel for the parties and perused the record, some direction, for deposit of compensation shall have to be made. This is in accord with the law laid down by the Apex Court in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*¹ and *State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors.*²

1 (2005) 1 SCC 705

2 2009 (5) All M.R. 1991

6] The valuation report estimates the market value of the suit premises at Rs.48.83 lacs. However, it is to be noted, as set out, in the reply filed by and on behalf of the tenant, that the building in question is 39 years old. Besides, the material on record does indicate that it is located in not quite a prime area with fish market and fishermen houses in the vicinity. There is also the issue raised by the respondent in his reply with regard to having made payments in the context of purchase. This is hardly the occasion to decide such matters, however such matters cannot be completely ignored, in the matter of determination of reasonable compensation. The area of the suit premises according to the landlord is 325 sq. ft but according to the tenant the same is 389 sq. ft. The premises are being used for residential purposes.

7] Therefore, upon cumulative consideration of all the aforesaid circumstances, including in particular, the circumstance that the society dues are Rs.1,500/- per month, it would be appropriate if the tenant is directed to deposit a sum of Rs.10,000/- (Rupees Ten Thousand) by way of reasonable compensation. Deposit shall have to be made from the date of application, which is 25 January 2010, or for the sake of convenience with effect from 1 February 2010. Arrears to be deposited within a period of four months from today. The tenant shall be at liberty to deposit the arrears by way of

four monthly instalments or in lumpsum. The compensation to be deposited on or before the 5th day of each succeeding month. It is made clear that the deposit of such reasonable compensation shall be a condition for the interim relief already granted. In case, there is any default in the matter of deposit of reasonable compensation as directed by this order, the landlord shall be at liberty to apply for vacation of the interim relief.

8] Normally, amount of compensation so directed to be deposited, cannot be permitted to be withdrawn by the landlord unless, a special case is made out. In this case however, Mr. Jamdar points out that the society dues are itself Rs.1,500/- per month. In these circumstances, from out of amount of arrears deposited, the landlord shall be entitled to withdraw a sum of Rs.1,00,000/- (Rupees One lac) as and by way of reimbursement in respect of the society dues which the landlord states that he has already paid in relation to the suit premises. Further, from out of the deposits to be made hereinafter, the landlord shall be entitled to withdraw a sum of Rs.2,000/- (Rupees Two Thousand) per month. The withdrawal of such amounts shall of course be subject to the landlord filing an undertaking before this Court that the landlord shall abide by any final orders that may be made in this petition and that the landlord shall bring back such amount if and when

directed. The undertaking to be filed within a period of four weeks from today. Copy of the undertaking to be furnished to the tenant.

9] Civil application is disposed of in the aforesaid terms.

(M. S. SONAK, J.)

Chandka