

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

WRIT PETITION NO. 2208 OF 2015

Shri Dinanath Dattaram Gavde

.. Petitioner

Vs.

Shri Mallesh Bhimaya Badarmena

.. Respondent

Mr.Amol D. Joshi for petitioner.

Mr.Bhushan Walimbe for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 2ND MARCH, 2015

P.C.

1 This writ petition is filed against an order passed by the District Judge-1, Kalyan while admitting the petitioner's Appeal. The District Judge-1, Kalyan was pleased to grant stay of the eviction decree passed against the petitioner subject to payment of Rs.3,500/- till decision of the appeal from the date of decree of the trial court and to continue to deposit the same on or before 10th day of every month. The District Judge also relied on the judgment of the Apex Court in the matter of *M/s. Atma Ram Properties (P) Ltd. V/s. M/s. Federal Motors Pvt. Ltd.*¹.

2 According to the counsel for the petitioner, the judgment of the *M/s. Atma Ram Properties (P) Ltd.* is not applicable inasmuch as that relates to the commercial premises whereas the present suit relates to the residential

1 2005 SCC 705

premises. I do not agree with the counsel for the petitioner because in ***M/s. Atma Ram Properties (P) Ltd.***, the Apex Court has not proceeded on the basis as to what type of property is involved. The Apex Court has proceeded on the basis that the person who has a decree in his favour should not loose anything and the person who has suffered a decree should also compensate the person who has a decree.

The District Judge in the impugned order has considered the certificate issued by an Architect in which it is mentioned the prevailing rent is about Rs.3,900/- to Rs.4,000/-. Having taken that into consideration all the facts and circumstances of the case, the District Judge had fixed the compensation to be paid at Rs.3,500/-.

3 The jurisdiction exercised under Article 227 is supervisory in nature. It is exercised when the subordinate court has assumed the jurisdiction which it did not have or has failed to exercise the jurisdiction though available in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby. The Court may also step in and exercise its supervisory jurisdiction if there is an error which is manifest and apparent on the face of the proceedings and grave injustice or gross failure of justice has occasioned thereby. (***Surya Dev Rai Vs. Ram Chander Rai & Ors.***²).

2 AIR 2003 SC 3044

The function of High Court under Article 227 of the Constitution is limited to see that subordinate Court or Tribunal functions within its limit or authority and not to see whether the order passed by the Trial Court or Tribunal was the correct order or not. I see no perversity or infirmity in the order passed.

4 In the circumstances, the writ petition is rejected. In view of the peculiar facts of the case, the petitioner to pay costs in the sum of Rs.2,000/- to be paid to the respondents within two weeks from today.

5 The petitioner herein who is also the appellant is stated to be 78 years age. In the circumstances, the District Judge-1, Kalyan is requested to include the petitioner's appeal also in the list of senior citizens and dispose it as early as possible in its normal turn.

(K.R. SHRIRAM, J.)