

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1657 OF 2015**

M/s. Mohan Rocky Spring Water
Breweries Limited

.. Petitioner

Vs.

M/s. Liberty Warehousing Co. Pvt. Ltd.

.. Respondent

Mr.Satyan Vaishnav a/w. Ms.Nupur Mukherjee and Mr.Anil Chauhan i/b
M/s. N N Vaishnava & Co. for petitioner.

Ms. Sheeja John i/b M/s. M.P. Savla & Co. for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 18TH FEBRUARY, 2015**

P.C.

1 The petitioner has filed an appeal against the decree of eviction passed against it by the trial Court. While admitting the appeal, the appellate court has directed the petitioner to deposit a sum of Rs.200/- per sq.ft.per month on 1450 sq.ft. which amounts to Rs.2,90,000/-. The appellate court has considered two very recent agreements in the same premises wherein one was let out at Rs.189 + service charges of Rs.80/- per sq. ft. and the other at Rs.325/- per sq.ft. Earlier agreement is dated 18th October 2013 and the later is dated 14th November 2014. The suit premises also is in the same building and on the ground floor. The counsel for the petitioner submitted that the suit premises actually was to be used as a godown though it is also used as a registered office and it is in the back side of the building. Therefore, the rates which are mentioned in the other agreements will not be

applicable. The counsel also submitted that the rate fixed by the appellate court is punitive.

2 In the judgment of the Apex Court in the matter of ***M/s. Atma Ram Properties (P) Ltd vs. M/s. Federal Motors Pvt. Ltd***¹ and in the matter of ***State of Maharashtra and Anr. Vs. Super Max International Pvt. Ltd. & Ors.***², the Apex Court has held that a party having succeeded from the Court below should not be deprived of the fruits of the decree or order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum and it is perfectly legal on the part of the Court while admitting the appeal or revision to impose certain conditions in order to grant stay.

3 The appellate court has considered the two agreements mentioned earlier and has come to a conclusion that Rs.200/- per sq.ft. per month will be reasonable amount of compensation to be paid. The jurisdiction exercised under Article 227 of the Constitution of India is supervisory in nature. It is exercised when the subordinate court has assumed the jurisdiction which if 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

1 (2005) 1 SCC 705

2 [2009 (2) RCR (Supreme Court) 246

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.*³). The function of High Court under Article 227 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 find no perversity or infirmity in the analysis of the appellate court while coming to the conclusion that Rs.200/- per sq.ft. per month is a reasonable amount to be paid.

4 In the circumstances, the petition is dismissed with costs of Rs.25,000/- to be paid to the advocates for the respondent within four weeks from today.

5 At this stage, the counsel for the petitioner seeks some time to deposit the amount as directed by the appellate court. The time to deposit the amount is extended by a period of 4 weeks.

(K.R. SHRIRAM, J.)

³ AIR 2003 SC 3044