

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4327 OF 2015

Pankaj Ramanlal Raval .. Petitioner
vs.
Krishnakant s/o. Bootaram Bhalla and ors. .. Respondents

Mr. P. K. Dhakephalkar, Sr. Advocate i/b Mr. Sameer R. Bhalekar for the Petitioner.

Mr. Vineet Naik, Sr. Advocate a/w. Mr. Mayuresh Borkar i/b Mr. Dinesh Rane for Respondent Nos. 1 to 4.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 27 July 2015.

Date of Pronouncing the Judgment : 28 July 2015.

JUDGMENT :-

1] Rule. With the consent of and at the request of learned Senior Advocate for respondent Nos. 1 to 4, Rule is made returnable forthwith.

2] This petition challenges the order dated 29 January 2015 made by the Appellate Bench of the Small Causes Court at Mumbai to the extent, it directs the petitioner to deposit jointly and severally alongwith certain others a sum of Rs.8,94,520/- per month in the Appeal Court, as a condition for stay upon the execution of the eviction decree dated 30 September 2013.

3] Mr. P.K.Dhakephalkar, learned Senior Advocate for the petitioner, submitted that the petitioner is in occupation of

premises ad-measuring 1705.77 square meters from out of premises totally ad-measuring 3578.08 square meters. Accordingly, learned senior counsel submitted that the Appeal Court was not right in directing the petitioner to deposit a sum of Rs.8,94,520/- in respect of the entire area, jointly and severally with other occupants. In any case, learned senior counsel submitted that deposit at the rate of Rs.250/- per square meters per month is grossly excessive and in making of such order, relevant considerations, particularly, in the form of Report submitted by Universal Real Estate Services has been excluded from consideration. Further, learned senior counsel submitted that the impugned order has incorrectly accepted the Report made by Mr.Hitendra Gangwar and on the said basis determined the compensation, which is totally excessive and unreasonable. For all these reasons, learned senior counsel submitted that the impugned order warrants interference.

4] Mr. Vineet Naik, learned Senior Advocate for respondent Nos.1 to 4 (contesting respondents) submitted that there was no jurisdictional error in making of the impugned order. Learned Senior Advocate submitted that the petitioner may deposit to the extent of area occupied by him. However, since, other parties have not petitioned against the order dated 29 January 2015, liberty be

reserved to proceed against them, in case, they fail to deposit amounts, at least proportionate to the areas in their occupation. Further, learned senior counsel submitted that reliance was rightly placed upon the Report made by Mr. Hitendra Gangwar.

5] The rival contentions now fall for my determination.

6] There is no merit in the first contention of Mr. Dhakephalkar, in the context of joint and several liabilities. In any case, Mr. Vineet Naik, learned Senior Advocate for respondent Nos.1 to 4, has stated that it is open to the petitioner to make deposit proportionate to the area of 1705.77 square meters in the occupation of the petitioner. This statement is accepted. Similarly, there shall be liberty to respondent Nos.1 to 4 to proceed to execute the eviction decree against the other parties, who have not challenged the order dated 29 January 2015, in case, such parties fail or neglect to comply with the directions for deposit, in the order dated 29 January 2015 particularly proportionate the areas in their occupation.

7] As to the aspect of reasonable compensation, this is not a case where the Report of Universal Real Estate Services has been totally excluded from consideration. The Appeal Court, upon consideration

of the same, has come to the conclusion that the same cannot be accepted in preference to the Report made by Mr. Hitendra Gangwar. The Gangwar Report, in the matter of determination of reasonable compensation at the rate of Rs.490/- per square meter per month, has also not been accepted by the Appeal Court in its entirety. The compensation is determined at the rate of Rs.250/- per square meter per month.

8] In my judgment, the compensation at the rate of Rs.250/- per square meter per month is also, on the higher side. The appropriate compensation in the present case would be Rs.200/- per square meter per month. This is because the Appeal Court has failed to appreciate that the Gangwar Report relies upon an instance of a relatively small plot/building. Appropriate deduction were therefore, warranted in the matter of determination of reasonable compensation in terms of the decision of the Apex Court in the cases of *Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited*¹ and *State of Maharashtra & anr. Vs. M/s. Super Max International Pvt. Ltd. & Ors.*² The Appeal Court has, however, correctly, considered and rejected the reasoning and methodology adopted the Universal Report. The Universal Real

1 2005(1) SCC 705

2 2009(5)ALL MR 1001

Estate Services are not stated to be any Government approved valuers.

9] Accordingly, the impugned order in so far as it concerns the petitioner and the petitioner alone, is modified. There shall be a stay upon eviction of the petitioner from an area of 1705.77 square meters in the petitioner's possession. However, this shall be subject to the petitioner's depositing, before the Appeal Court, compensation at the rate of Rs.200/- per square meter per month on or before fifth day of each month, as reasonable compensation for the use and occupation of the suit premises admeasuring 1705 sq. meter from the date of eviction of decree dated 30 September 2013, till the decision in the appeal and further to continuing subject to deposit at the same rate on or before fifth day of each succeeding month, till any further orders that may be made by the Appeal Court in the main appeal. Liberty for deposit of proportionate arrears of compensation either in lump-sum or in three equal monthly installments stands. The petitioner shall be entitled to credit in respect of the amounts already deposited in pursuance of the impugned order.

10] It is once again clarified that only the petitioner in this petition shall be entitled to benefit of this order, since, at least as of now, the other parties liable under the impugned order dated 29 January 2015, have not chosen to impugn the same.

11] Rule is made absolute to the aforesaid extent only. There shall, however, be no order as to costs.

(M. S. SONAK, J.)