

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

WRIT PETITION NO. 3346 OF 2015

Mrs.Ai Lien alias Alice Shiesh wd/o
Mr.C.L. Shiesh & ors.

... Petitioners

v/s

Shih Ming Huang & ors.

... Respondents

Mr.P.S. Dani, senior advocate along with Sandeep Goyal and Pratap Mandlik i/by M/s.Mulla & Mulla & Craigie Blunt & Caroe for the petitioners.

Mr.Rajesh G. Singh i/by Legal Liaisons for the respondents.

CORAM: N. M. JAMDAR, J.

DATED : 13TH APRIL, 2015

ORAL ORDER:

By this petition, the petitioners challenges the order passed by the Appellate Bench of the Small Causes Court, Mumbai, dated 8 January 2015, fixing the compensation at the rate of Rs.10,000/- per month, as a condition for grant of stay to the judgment and decree passed by the Small Causes Court, Mumbai, dated 31 July 2014, directing the eviction of the petitioner.

2. The suit premises is a residential flat bearing No.E-9, 4th floor of the Sangam Bhavan, Sangam Co-operative Housing Society near Strand Cinema, Colaba, Mumbai. It admeasures 300 sq. ft. The

respondents filed a suit bearing Suit No.1135 of 1989 seeking eviction of the petitioners, in the Small Causes Court, Mumbai. The Small Causes Court framed the issue as to whether the petitioners were allowed to occupy the premises as gratuitous licensee and caretaker. This issue was answered in the affirmative in favour of the respondents/licensor and by the judgment and decree dated 31 July 2014, the petitioners were directed to hand over the vacant possession of the suit premises.

3. The petitioners thereafter filed an appeal bearing Appeal No.408 of 2014. In this appeal, the petitioner took out an application for stay of the impugned judgment and decree. This application has been disposed of by the impugned order.

4. Mr.Dani, the learned senior advocate appearing for the petitioners contended that, it is the case of petitioner No.1 that she is a widow working as beautician in a beauty parlour and earns only Rs.10,000/-. He submitted that, by fixing the compensation, regard must be had to the ability of the licensee to pay the compensation fixed.

5. Learned appellate Court has taken note of the fact that, in absence of any document to substantiate the case that the applicant is earning only Rs.10,000/-, it is difficult to believe that the petitioner No.1 staying in a place like Colaba and working as a beautician and would earn at Rs.10,000/-. It was for the petitioner

No.1 to produce cogent material if the contention is advanced that the petitioner No.1 is unable to pay Rs.10,000/-. Nothing has been produced on record. The premises is a flat admeasuring 300 sq.ft. in Colaba and in normal circumstances, fixing of compensation of Rs.10,000/- per month would be more than fair to the licensee. That being the position, it was up to the petitioner No.1 to demonstrate why she should be given indulgence to reduce the compensation, which she has failed to do so. The other applicants, her children, are of an age where they can also earn.

6. In the circumstances, no perversity is found in fixing the compensation as Rs.10,000/-. No interference is warranted in writ jurisdiction.

7. Writ petition is accordingly rejected.

(N. M. JAMDAR, J.)