

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5100 OF 2015

Siddharth Suhas Bhagat .. Petitioners
-Versus-
Bimal @ Bimalkumar Mannulal Agarwal .. Respondent

Mrs.Varsha B. Kapse for petitioners
Mr.Girish Agarwal for respondent No.1

CORAM : M.S.SONAK, J.

DATE : 23rd July 2015.

P.C.

1] Rule. With the consent and at the request of learned Counsel for the parties, rule is made returnable forthwith.

2] The challenge in this petition is to the orders dated 23rd September 2014 and 21st February 2015 made by the Small Causes Court (trial court).

3] By the first order dated 23rd September 2014 the petitioner was directed to deposit arrears towards compensation for the licence of the suit premises and further pay compensation at the

rate of Rs.39,600/- per month for continuous use thereof. By the second order dated 21st February 2015, on account of non compliance by the petitioner, the petitioners' defence has been struck off.

4] Learned Counsel for the petitioner Ms.Kapse submitted that there is no basis for determining the compensation at Rs.39,600/- per month and in the leave and licence agreement, there was a provision for increase of 10% p.a. each year over and above the basic rate of compensation at the rate of Rs.18,000/- p.m. The term of licence was upto 30th September 2014 and, thereafter, the same has been extended by the respondents. However, the respondents refused to honour the extension. Besides, Ms.Kapse submitted that the petitioner is paying taxes and other outgoings to the Pune Municipal Corporation as also the M.S.E.B. Taking into consideration all these circumstances, there was no justification for determining the rate of compensation at Rs.36,900/-.

5] On the other hand, Mr.Agarwal learned Counsel for the respondents submitted that there have been defaults on the part of

the petitioner and, therefore, the defence of the petitioner was rightly struck off. Insofar as determination of compensation is concerned, Mr. Agarwal submitted that the trial court has rightly drawn sustenance from the provisions contained in section 24(2) of the Maharashtra Rent Control Act, 1999. For the aforesaid reasons, Mr. Agarwal submits that this petition be dismissed.

6] Having heard the learned Counsel for the parties and perusing the records, in my judgement, there was no justification for determination of compensation at Rs.39,600/- p.m. No doubt, once the term of leave and licence agreement as stated therein has expired, the licensee or the erstwhile licensee cannot insist that he will pay the compensation as stated in the licensed agreement itself. However, considering the circumstances, the term of license as stated in the deed of license has expired only on 30th September 2014, the terms therein, including in particular, the term which provides for 10% increase every year was one of the relevant circumstance to be taken into consideration. The provisions contained in section 24(2) of the Maharashtra Rent Control Act also offered another relevant consideration. However, it must be noted

that normally the principal in section 24(2) is to be applied at the stage of final disposal and not at the stage of determination of interim compensation. This is only the ordinary rule and not the invariable rule. Regard is also required to be given to the location of the premises as also other circumstances, like the liability to pay outgoings in respect of the premises.

7] If all such relevant circumstances are taken into consideration, then, interest of justice would be met if the petitioner is required to pay compensation of Rs.25,000/- p.m. rather than Rs.39,600/- p.m. as directed by the trial court. To this extent, the order dated 23rd September 2014 is modified. In pursuance of the interim direction issued by this Court, the petitioner has already deposited an amount of Rs.3 lakhs before the trial court. If there are any other arrears, the petitioner undertakes to clear the same within a period of four weeks from today.

8] In such circumstances, the order dated 21st February 2015 striking off the defence is set aside. The proceedings in Civil Suit No.302 of 2013 are ordered to be expedited. Rule is made absolute

in the aforesaid terms. There shall be no orders as to costs. All concerned to act on an authenticated copy of this order. It is made clear that this court has made no observations on the merits of the matter and as such all contentions of all parties are specifically kept open for decision by the learned trial court.

(M.S.SONAK, J.)