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

CIVIL APPLICATION NO. 1642 OF 2014
IN
FIRST APPEAL NO. 1973 OF 2007

Achhabar Ram Avatar (dead)
since deceased by his heirs and
legal representatives ... Applicant.
V/s.
Brijwasi Dugdhalaya (P) Ltd. ... Respondent

Mr. S.P. Kanuga for the applicant.
Mr. M. L. Patil for the respondent.

CORAM : K. K. TATED, J.
DATED : 27/04/2015.

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by the plaintiff for directing the respondent defendant to pay monthly compensation of Rs.1,50,000/- per month or such other rate as this Hon'ble Court may deem fit and proper in respect of suit premises i.e. Shop No.3 and room no. 13 in building known as Narayan building, ground floor at 12, 1at Pasta Lane, Colaba Cause way, Mumbai. The suit premises is of 310 sq. ft carpet area and built up is 500 sq. ft.

3 The plaintiff filed S.C. Suit No. 7329 of 1975 in the Bombay City Civil Court, Mumbai for possession of suit premises and recovery of royalty payment of Rs.7,250/- till date of filing of the suit and mense profit @ Rs.700/- or any other higher rate deem fit for per month from

the date of the suit till its realisation. That suit was decreed by the Trial Court by decree dated 13.12.2006, directing defendant to handover the suit premises along with fittings, furniture and fixtures and other articles to the plaintiff. The operative part of the decree read as under :-

> "**ORDER**
>
> 1 S.C. Suit No. 7329.75 is decreed in following terms:
>
> a) Issue mandatory injunction directing the defendant to handover possession of Shop No. 3 and room No. 13 (in which business of Hindustan Tea House was formerly carried on) alongwith fittings, furniture and fixtures and other articles mentioned in para no. 13 of the plaint to the plaintiff within three months from today.
>
> b) Issue mandatory injunction direction against the defendant directing them to pay to the plaintiff Rs.7250/- as arrears of royalty and compensation upto the date of filing of the suit with interest at the rate of Rs.8/- from the date of default till its actual realisation.
>
> c) Plaintiffs are entitled to the mense profit from the date of filing of the suit till the payment is made to them at the rate which shall be fixed by the Registrar of this Court, in a separate enquiry to be initiated at the instance of the plaintiff and Registrar is directed to dispose of the said enquiry expeditiously as the suit claim is of 1975.
>
> 2 Defendant to bare their own costs and costs of the plaintiff and also pay Rs.1,00,000/- towards compensatory costs.
>
> 3 Decree be drawn accordingly."

4 Being aggrieved by the said decree dated 13.12.2006, the defendant filed present First Appeal no. 1973 of 2007 in this Court. The same was admitted by this Court (Coram : Anoop V. Mohta, J) by order dated 04.08.2007 and 06.02.2008 directing the defendant to pay sum of Rs.5,000/- per month towards the use and occupation charges from

the date of judgment i.e. 13.12.2006 to the plaintiff.

5 This application is preferred by the plaintiff for enhancement of compensation from Rs.5,000/- per month to Rs.1,50,000/- per month.

6 The learned counsel for the plaintiff submits that the suit premises is situated in the prime area of Colaba Cause way where the rates of the use of business premise are very high. He submits that adjacent to the plaintiff shop there is shop no.4 Pasta Lane Colaba Colaba, Mumbai. In the said shop, the business of Boutique is conducted. The said person is paying Rs.250/- per sq. feet to the owner. He submits that the relevant rates since 2007 has grown up to the large demand. He submits that considering the rate fixed by the Government in Ready Reckoner as well as commercial market rate, the plaintiff must get sum Rs.1,50,000/- per month by way of compensation. He submits that Court can pass the order even during the pendency of the litigation in enhanced compensation. In support of this contention, he relies on Judgment of our High Court in the matter of ***Sangeeta Prints V/s. Hemal Prints & Ors. reported in AIR 1986 Bom 423***. He submits that since, 2007 the property taxes are increased therefore, the plaintiff has to pay more property taxes to the corporation and other authorities. Considering the overall facts and circumstances of the case, the learned counsel for the plaintiff submits that defendant may be directed to pay sum of Rs.1,50,000/- per month by way of compensation in respect of suit premises.

7 On the other hand, the learned counsel for the respondent

vehemently opposed the present Civil Application. He submits that this Court (Coram : Anoop V. Mohta, J) by order dated 04.08.2007 and 06.02.2008 already directed defendant to pay sum of Rs.5000/- per month by way of compensation to the plaintiff till the hearing and final disposal of First Appeal. He submits that, that order was passed by this Court after hearing both the sides. At that time, the plaintiff has not taken any permission from this Court to make appropriate application in future for demanding enhanced compensation. Hence, present Civil Application is not maintainable. He further submits that even the plaintiff in their plaint claimed the future compensation @ Rs.700/- per month only. Hence, in any case, the plaintiff is not entitled to claim the enhanced compensation @ Rs. 1,50,000/- per month in respect of suit premises during the pendency of he First Appeal. He further submits that in any case, the Trial Court has granted liberty to the plaintiff to file appropriate application for mense profit. Whatsoever, mense profit will be decided by the Court that is binding on both the parties. Hence, at present, there is no question of allowing the present Civil Application directing defendant to pay enhanced compensation of Rs.1,50,000/- per month. Hence, there is no substance in the present Civil Application and same to be dismissed with costs.

8 I heard both the sides at length. Admittedly, in the present proceeding, the defendant is in possession of the suit premises as per agreement dated 15.10.1971. At that time, the monthly royalty/compensation was fixed @ Rs.700/- per month. As per contention of the plaintiff, the defendant is multinational company and doing their business on larger scale all over the India.

9 Considering the inflation over all in the market as well as area in which the suit premises is situated i.e. Colaba Causeway, I am of the opinion that the defendant is liable to pay sum of Rs.20,000/- per month compensation from the date of filing of present Civil Application i.e. 09.05.2014. Hence, defendant is liable to pay enhanced compensation from the month of May, 2014 and same will be subject to outcome of the First Appeal. The arrears from May 2014 to April, 2015, to be cleared by three installments within six months from the date of this order. The monthly compensation to be paid on or before 10th of subsequent month till the hearing and final disposal of the First Appeal.

10 Hence, the following order :

a) Civil Application is partly allowed.

b) Defendant to pay sum of Rs.20,000/- by way of compensation to the plaintiff from May, 2014.

c) The arrears @ Rs.20,000/- per month from May, 2014 till April, 2015 to be made clear by three installments within six month from today adjusting the amount already paid.

d) The subsequent compensation to be paid on or before 10th of each month till the disposal of First Appeal subject to the outcome of the First Appeal.

e) Civil Application is disposed of accordingly.

f) Office is directed to place the First Appeal in weekly board for final hearing as per its turn in expedited matter.

(K.K.TATED, J.)