

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7512 OF 2014

Prakash H. Motwani and anr. .. Petitioners
vs.
Bombay Khadi & Village Industries
Association .. Respondents

None for both the parties.

CORAM : M. S. SONAK, J.
DATE : 26 JUNE 2015.

P.C. :-

- 1] None for the petitioners.
- 2] This petition challenges the order dated 21 February 2014 made by the Appellate Bench of the Small Causes Court granting a stay on the execution of the eviction decree, subject to the condition that the respondents herein pays reasonable compensation of Rs.19,210/- per month from the date of eviction decree till the disposal of the appeal.
- 3] The petitioners are mainly aggrieved by the quantum of compensation fixed in the impugned order. According to the petitioners the same should have been Rs.65,216/- per month, as the said quantum represents the market rent. The petitioners, in their petition, question the valuation report submitted by the Architect of

the respondents, which has formed the basis for determination of the compensation in the impugned order. The petitioners also rely upon the decisions of the Hon'ble Apex Court in case 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.

4] Having perused the impugned order as well as the material on record, in my judgment, there is no jurisdictional error or perversity of approach. The Appellate Bench, has taken into consideration material placed on record by the parties as also the legal position as enunciated by the Hon'ble Apex Court in the aforesaid two decisions. The Appellate Bench, has rightly observed that in determining the rate of reasonable compensation, market rent is only one of the parameters, required to be taken into consideration. It is further necessary to take into consideration other relevant parameters like the payment capacity of the tenant, so that the condition imposed is not too onerous, so as to virtually deny the tenant right to effectively prosecute the appeal or lose the possession of the suit premises pending the appeal. In the present case, the tenant is Bombay Khadi

1 2005(1) SCC 705

2 2009(5) ALL MR 1001

& Village Industries Association, which is stated to be doing business on no profit and no loss basis. There is also material that the association is facing losses. The Appellate Bench has taken into consideration the valuation report. In making of such valuation report, the Architect of the tenant has taken into consideration the age of the suit property as also the facilities available therein.

5] For all these aforesaid reasons, there is no necessity to entertain the present petition, which is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

dinesh