IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 611 OF 2014
IN
CIVIL REVISION APPLICATION NO. 652 OF 2013

Rasiklal M. Nagrecha & Ors. .. Applicants
In the matter between :
M/s. Hugo Wachmann India Pvt.
Ltd. & Anr. .. Petitioners
vs.
Rasiklal M. Nagrecha & Ors. .. Respondents

Mr. S. H. Patel for Applicants.
Mr. S. Murthy i/b. Mr. A. Patil for Original Petitioners.

CORAM : M. S. SONAK, J.
DATE: 20 OCTOBER 2015

P.C. :-

1] This civil application by the Applicants – Landlords seek the following reliefs :

(a) Leave to withdraw an amount of Rs.9,56,284.70 paise deposited by the tenant towards arrears of rent / taxes from April 1985;

(b) Direction to deposit further amounts towards contractual rent / taxes; and

(c) Determination of reasonable compensation as a condition for the tenant continuing in possession of the suit premises on the basis of interim relief granted by this Court.

2] So far as the first two reliefs are concerned, the same do not pose considerable difficulty. The amount deposited is towards contractual rent. Accordingly, there can be no objection to and none is in fact raised by the learned counsel for the tenant in so far as withdrawal of the amount of Rs.9,56,284.70 paise is concerned. The Registry to further permit the Applicants – landlords to withdraw the said amount unconditionally.

3] There is no need to issue further directions with regard to deposit of contractual rent as Appeal Court's eviction decree is dated 9 May 2013 and after the said date, since the tenant is protected by means of interim order of this Court, there arises requirement to deposit reasonable compensation in terms of law laid down by the Apex Court in the cases of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd*.[1] and *State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors*.[2]

4] This Court by order dated 8 July 2015 had determined reasonable compensation at the rate of Rs.25,000/- on an ad hoc basis. However, the parties were offered opportunity to place material on record to assist this Court in the determination of reasonable compensation. In pursuance of the same, both parties

1 (2005) 1 SCC 705
2 2009 (5) All MR 1001

have placed on record such material, which includes *inter alia* valuation reports.

5] As per the valuation report submitted by the landlords the reasonable compensation is assessed at Rs.94,600/- per month. Valuation report placed on record by the tenant, on the other hand, values the suit premises at Rs.22,30,885/- and on the said basis proposes reasonable compensation at Rs.16,096/-.

6] Even according to the valuation report submitted by the tenant, it is clear that the suit premises are located in a building known as Fern House, Colaba Division at junction of Ormiston Road and Bhagat Singh Road. All amenities such as transport, shops, restaurants, hospitals, schools, colleges and cinema are available nearby. The ground floor is fully occupied by shops, the entire locality i.e. Shahid Bhagat Singh Road is full of shops on the ground floor. The suit premises comprises of two rooms, pantry and toilet and are used as office premises. The built up area is 874 sq. ft. The flooring comprised M. S. joists and ladi coba. The doors and windows are of teak wood and so is the staircase. The floor finish is generally marble mosaic tiles. The valuation report no doubt adds that the building is stated to be about 100 years old, has no lift. The plumbing fittings are of the older variety and electricity wiring is open. This valuation report admits that other facilities like drainage are available. Despite all this, by recourse to Reckoner and thereafter deducting 90% from the rate, the valuer has determined the market value of the suit premises at Rs.22,30,885/-.

7] The learned counsel for the landlords, at the outset offered to pay the tenant an amount of Rs.50,00,000/-, in case the tenant vacates the suit premises. The learned counsel for the landlords states that the landlords are ready to pay the said amount within two days by means of a demand draft in case the tenant is willing to vacate the suit premises. Although, such offer is obviously not binding upon the tenant, the same is a sufficient comment upon the valuation report placed on record by the tenant suggesting that premises which have a built up area of 874 sq. ft. located in a highly up market area like Colaba is valued in its entirety for an amount of Rs.22,30,885/-.

8] This Court is constrained to observe that the valuation report is neither based upon proper engineering principles, nor has any regard been shown to the actual market position. The report of Mr. U. D. Chande, therefore is clearly not acceptable. The valuer, despite reference to several facilities and amenities which the suit premises enjoy has opined that the entire value of the suit premises is Rs.22,30,885/-.

9] The valuation report submitted by the landlords suggests reasonable compensation at the rate of Rs.94,600/-. This valuation report has taken into consideration the circumstance that the age of the building is more than 75 years and does not have amenities like lift. Therefore, after reference to average market price as also the Ready Reckoner has offered deductions to the rate of 50%. The report suggests that normally premises comparable to the suit premises would fetch reasonable compensation of about Rs.2,00,000/- but after deduction, has determined the reasonable compensation at Rs.94,600/-. In valuation report, it is stated that several important landmarks structures like Churchgate Railway Station, C.S.T. Are situate within range of 2.00 to 2.5 k.ms. of Fern House. Further, Fern House in which the suit premises are located is right opposite to Electricity House, in the neighbourhood of Regal Cinema, Strand Cinema, Colaba Market, Gateway of India, Taj Mahal Hotel, Museum, Shops, Restaurants, Schools, Flora Foundation, University, Jehangir Art Gallery. The Arabian Sea is located at 2 minutes walk from the suit premises. The infrastructure facilities are fully developed in this area. There is no case made out in the reply filed by the tenant, which is incidentally a Company which has no financial means to pay market rates. Even according to the valuation report submitted by the tenant, the suit premises are being used for commercial purposes i.e. as office. The learned counsel for the tenant handed in certain photographs to show the state of suit premises and the repairs carried out thereto. Photographs, rather than assisting the tenant assist entirely the case set out by the landlords. On basis of the photographs, it is clear that even though the building is over 75 years of age, the premises are substantially well kept. The photographs are kept on record.

10] From out of the valuation suggested by the tenant, some further deductions can be made, considering the age of the building and the statement made by the learned counsel for the tenant that the expenditure has been incurred by the tenant for the purposes of repairs from time to time. Accordingly, compensation is determined at the rate of Rs.70,000/- (Rupees Seventy Thousand) per month.

11] The ad interim relief restraining the execution of eviction decree is confirmed. However, this shall be subject to the tenant filing usual undertaking in this Court within a period of two weeks from today. Copy of the undertaking to be furnished to the learned counsel appearing for the landlords before filing in the Registry. The interim relief is further subject to the condition that the tenant deposits in this Court reasonable compensation at the rate of Rs.70,000/- per month with effect from 1 June 2013, since the Appeal Court's eviction decree is dated 9 May 2013. Such deposit shall be on or before the 5th day of each succeeding month. The arrears to be deposited by 31 December 2015. In case, there is any default in the matter of deposit of reasonable compensation, interim order to stand vacated. The tenant shall be entitled to credit of the compensation amount at the rate of Rs.25,000/- per month, if already deposited for the relevant period.

(M. S. SONAK, J.)

Chandka