

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1512 OF 2012
IN
CIVIL WRIT PETITION NO.742 OF 2004

Shri Shantanu Shankar Deshpande and Anr.] ... Applicants

Versus

Shri Ramakant Shridhar Deo and Ors.] ... Respondents

Mr. R. S. Apte, Senior Advocate a/w Mr. N. R. Bubna for Applicants.
Mr. Jaydeep S. Deo for Respondents.

CORAM :- M. S. SONAK, J.

DATE :- JULY 02, 2015

P. C. :-

1. In pursuance of order dated 31/01/2014, the learned Small Causes Court at Pune has determined compensation at the rate of Rs.15,000/- (Rupees Fifteen Thousand Only) per month.

2. Having heard the learned Counsel for parties and perused the material on record, in the facts and circumstances of this case, the determination as arrived at by the learned Small Causes Court, cannot be accepted in its entirety.

3. In determining compensation at the rate of Rs.15,000/- per month, the trial Court does not appear to have taken into consideration certain relevant material and circumstances. In this case, the landlord, in his Affidavit in lieu of examination-in-chief made in the year 2014, had claimed compensation at the rate of Rs.10,500/- (Rupees Ten Thousand Five Hundred Only). The material on record indicates that the terrace/balcony into which the three rooms of the suit premises earlier opened onto, have since been demolished by the landlord. Same is the position with the erstwhile toilet in the suit premises. The building is 78 years of age. The landlord, in the course of his deposition, has admitted that the premises are required for the purposes of demolition and re-construction. The eviction decree in the present case is not on such ground. The landlord has expressed disinclination to provide alternate accommodation to the tenant, although this is one of the requirements where eviction is to be granted on the grounds of demolition and re-construction. There is a dispute as regards the area of the suit premises. According to the landlord, the area is 300 sq.ft., though the tenant claims that the same is about 750 sq.ft. All these matters were relevant in determination of compensation. The same having not been considered to accept the determination of compensation at the rate of Rs.15,000/- per month.

4. The fact, however, remains that according to the tenant, the suit premises admeasures 750 sq.ft. Further, the suit premises are admittedly located at Shivaji Nagar, near Deccan, which is one of the prime localities in Pune. Applying, therefore, the principles laid down

by the Hon'ble Apex Court in the cases of *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd*¹ and *State of Maharashtra and Another Vs. Supermax International Private Limited and Others*²., it is necessary that the tenant deposits reasonable compensation as a condition for interim relief restraining execution of eviction decree.

5. Upon consideration of material on record and in the light of landlord's claim in the Affidavit in lieu of examination-in-chief seeking deposit of Rs.10,500/- per month, it would be appropriate if the tenant is directed to deposit in this court reasonable compensation at the rate of Rs.7,000/- (Rupees Seven Thousand Only) per month with effect from 01/04/2012.

6. Mr. R. S. Apte, learned Senior Counsel for landlord, submits that the direction for deposit of reasonable compensation ought to be made from the date of eviction decree i.e. from 30/07/1998. In the peculiar facts and circumstances of the present case, it is not possible to accede to such submission. This is because application for deposit was made by the landlord only in April 2012. Further, the material on record, *prima-facie*, indicates that the landlord required the suit premises for the purposes of demolition and re-construction, but the landlord is not prepared to offer the tenant any alternate premises. In such a situation, if deposit is directed from 30/07/1998, the same would be too onerous to the tenant and perhaps enable the landlord to secure vacant possession of the suit

1 (2005) 1 Supreme Court Cases 705

2 (2009) 9 Supreme Court Cases 772

premises, without due consideration of the tenant's case on merit. In the case of *Atmaram (supra)*, the Hon'ble Apex Court has sounded a caution in this regard.

7. This Civil Application is accordingly disposed of with direction to the tenant to deposit in this Court with effect from 01/04/2012 reasonable compensation at the rate of Rs.7,000/- (Rupees Seven Thousand Only) per month. Such deposit to be made on or before 10th day of each succeeding month. The arrears from 01/04/2012 till 30/06/2015 to be deposited within a period of eight weeks from today. It is clarified that such deposit shall be a condition for interim relief restraining execution of eviction decree. In case of default, it shall be open to the landlord, to apply for vacation of interim relief so granted.

8. Civil Application stands disposed of in the aforesaid terms.

(M. S. SONAK, J.)