

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 452 OF 2013
IN
CIVIL REVISION APPLICATION NO. 319 OF 2011

Manohar Singh Dhody	..	Applicant /Ori. Resp. 1
<u>In the matter between :</u>		
Harish R. Lalwani	..	Applicant / Ori. Applicant
vs.		
Manohar Singh Dhody & Ors.	..	Respondents

Ms Soma Singh with Mr. Shubro Dey i/b. Mr. Vivek Sharma for
Applicant in C.A.
Mr. G. S. Godbole with Mr. D. S. Patil for Original Applicant in CRA.

CORAM : M. S. SONAK, J.
DATE: 27 OCTOBER 2015

P.C. :-

1] The matter has come up for determination of reasonable compensation as a condition for interim relief. This Court had requested the Trial Court to initially determine the amount of reasonable compensation. By order dated 16 April 2015, the Trial Court has determined sum of Rs.10,000/- plus existing rent.

2] Upon perusing the order of the Trial court dated 16 April 2015, as also the materials in support thereof, including in particular, the valuation report submitted by and on behalf of the tenant, it is clear that even the Trial Court had determined the market rent at Rs.51,000/-. The tenant, in the course of evidence, admitted that

premises in the vicinity i.e. Dadasaheb Phalke Marg, Dadar, would fetch rent to the tune of Rs.50,000/- or thereabouts. However, the tenant (DW 1) deposed that since the building was old, the rents fetched would be in the range of Rs.20,000/- to Rs.25,000/-. The Trial Court, in the context of report of the tenant's valuer has also recorded a finding that the reasonable compensation would be Rs.26,000/-. However, finally, the Trial Court after adverting to the financial capacity of the tenant has determined the reasonable compensation at Rs.10,000/- per month.

3] The tenant has no doubt, indicated that he is dependent upon the son and his son draws a salary of Rs.49,500/- per month and has also taken some personal loans. However, on the basis of the same, it will not be proper to determine the compensation only at Rs.10,000/- per month, when comparable premises would fetch rents at around Rs.50,000/- per month. The reasonable compensation is not required to be extremely onerous, so that the tenant is forced to suffer eviction even before his appeal is heard on merits. That however does not mean that the sole basis for determining reasonable compensation has to be only the payment capacity of the tenant. In determining the reasonable compensation due regard has to be had to the market rent as well as the payment capacity. Necessary weightage has to be accorded to the two

aspects, along with all other relevant aspects which go into the decision making. The Petitioner's son resides with the Petitioner in the suit premises. The Petitioner was earlier stated to be in business. The issue of private loans is really not a matter which is verifiable at this stage. Upon consideration of the entire material on record, no doubt, it would be too onerous to determine the reasonable compensation at Rs.50,000/- per month. However, the compensation cannot be unduly low as well. Therefore, upon cumulative consideration of the material on record, as also the order made by the Appeal Court, it would be appropriate if reasonable compensation is fixed at the rate of Rs.18,000/- per month.

4] In this case, the eviction decree was granted by the Appeal Court on 29 January 2011. However, the interim order was made by this Court only on 21 February 2012. The application for deposit of reasonable compensation was made in May 2013. Normally, the direction for deposit of reasonable compensation is required to be made from the date of the eviction decree or at least the Appeal Court decree. In the facts of the present case however, it would be appropriate if direction for deposit of reasonable compensation at the rate of Rs.18,000/- is made from May 2013. This will to a certain extent, take care of submission with regard to payment capacity.

5] Accordingly, reasonable compensation is determined at Rs.18,000/- (Rupees Eighteen Thousand) per month. The Petitioner - tenant to deposit on or before the 5th day of each succeeding month reasonable compensation at the rate of Rs.18,000/- per month with effect from May 2013. The time for deposit of arrears is granted upto 31 December 2015. If any amounts have been deposited in the meanwhile, the Petitioner – tenant shall be entitled to credit for the same. It is clarified that this deposit shall be a condition for an interim relief. In case there is any default on the part of the Petitioner – tenant, the Respondent – landlord shall be entitled to apply for vacation of the interim relief.

6] All concerned to act on basis of authenticated copy of this order.

7] Civil application is disposed of accordingly.

(M. S. SONAK, J.)