

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5551 OF 2015

M/s. Delux Printing Machinery Co.] ... Petitioner

Versus

Jitendra Pramlal Shah and Ors.] ... Respondents

Mr. A. S. Uraizee a/w M. V. Singh for Petitioner.
Mr. P. N. Shah for Respondents.

CORAM :- M. S. SONAK, J.

DATE :- SEPTEMBER 15, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for Petitioner, Rule is made returnable forthwith.
3. This petition challenges order dated 05/05/2015 to the extent it imposes a condition for deposit of Rs.40,000/- (Rupees Forty Thousand Only) per month by way of compensation for the Petitioner to continue in possession of the suit premises under the interim order of the Appeal Court.

4. Mr. Uraizee, learned Counsel for Petitioner, has submitted that the two premises admeasure hardly 150 sq.ft. and therefore, even if the so called 'comparable instance' produced by and on behalf of the landlord were to be taken into consideration, the reasonable compensation could never have been fixed at the rate of Rs.40,000/- per month. Further, Mr. Uraizee pointed out that in the plaint, even by way of final relief, the landlord had prayed for mesne profit at the rate of Rs.30,000/- (Rupees Thirty Thousand Only). These two aspects have been completely ignored by the Appeal Court in determining the compensation at the rate of Rs.40,000/- per month.

5. On the other hand, Mr. Shah, learned Counsel for landlord, has submitted that the prayer in the Trial Court, was made sometime in the year 2009. Further, the actual area of the suit premises is about 250 sq.ft., particularly if the open covered area of 10' X 10' is taken into consideration. Mr. Shah also pointed out that in this case, there is no direction for deposit of contractual rent, which, in terms of the decision of the Hon'ble Apex Court in the case of ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd***¹, was required to be made. Therefore, upon taking into consideration all these aspects, there is no case made out to interfere with the determination made by the Appeal Court.

6. Having heard the learned Counsel for parties and perused the record, in my judgment, interest of justice would be met if the compensation amount is reduced to Rs.32,000/- (Rupees Thirty Two

¹ (2005) 1 Supreme Court Cases 705

Thousand Only) per month. The reason for this reduction is that the comparable instance upon the reliance was placed by the landlord, relates to premises which admeasure around 350 sq.ft. The suit premises in the present case, according to the Petitioner, admeasures around 150 sq.ft. Further, the landlord, in the plaint itself, has sought for direction for payment of Rs.30,000/- per month. Although such prayer was made in the year 2009, the same is a relevant consideration and therefore, is required to be taken into account. At the same time, since there is no separate order for deposit of contractual rent which would be in the range of Rs.2,000/- per month, it would be appropriate that compensation is determined at the rate of Rs.32,000/- per month. For determining this rent, necessary cognizance is taken of the statement very graciously made by Mr.Uraizee on the basis of instructions from the tenant that the tenant would have no objection if from out of the amount which the tenant is directed to deposit, the landlord withdraw each month a sum of Rs.5,000/-. Such withdrawals at the rate of Rs.5,000/- per month, are therefore permitted from the date of the decree i.e. 10/03/2014.

7. The impugned order is interfered with only to the extent of reducing the amount of compensation from Rs.40,000/- to Rs.32,000/-. Rest of the order remains undisturbed. However, the time limit for clearance of arrears is extended by a period of three months from today.

8. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9. Further, in this case, one of the landlords who is a senior citizen, is unfortunately afflicted with a physical disability. In these circumstances, the Appeal Court is directed to decide the appeal as expeditiously as possible and in any case, within a period of one year from today.

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

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.