

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5688 OF 2015

M/s. Shree Durga Trading Co. .. Petitioner
vs.
Ateeq Anwar Agboatwala & ors. .. Respondents
WITH

WRIT PETITION NO. 7123 OF 2015

Ateeq Anwar Agboatwala and ors. .. Petitioners
vs.
M/s. Shri Durga Trading Company and ors. .. Respondents

Mr. Jaydeep Deo for the Petitioners in Writ Petition No. 7123 of 2015
and for the Respondent Nos.1,2,3,4, & 5 in Writ Petition No. 5688 of
2015.

Mr. K.D. Jha for the Respondent No.1 in Writ Petition No. 7123 of
2015 and for the Petitioner in Writ Petition No. 5688 of 2015.

CORAM : M. S. SONAK, J.
DATE : 28 JULY 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel
for the parties, Rule is made returnable forthwith.

2] Both these petitions challenge the order dated 21 April 2015
made by the Appellate Bench of the Small Causes Court granting a
stay on execution of eviction decree dated 30 September 2014
subject to the tenant's (petitioner in Writ Petition No. 5688 of 2015)

depositing compensation at the rate of Rs.50,000/- per month with effect from May 2015 during pendency of the appeal against the conviction decree dated 30 September 2014.

3] Writ Petition No.5688 of 2015 has been instituted by the tenant complaining that the condition for depositing of Rs.50,000/- per month is quite harsh and therefore, should be interfered with. Writ Petition No. 7123 of 2015 has been instituted by the landlords complaining that the market rent in respect of the suit premises would be Rs.2 Lacs or thereabouts and the determination by the Appeal Court is unreasonable, as relevant considerations have been totally excluded. Mr. Jaydeep Deo, learned counsel for the petitioners-landlords adverted to material on record suggesting that even in the past the suit premises were sub-let by the tenant and the tenant had paid a sum of Rs.12 Lacs to the sub-tenant in order to secure possession of the suit premises from sub-tenant. Mr. Deo contends that even as of date, it is not clear whether the tenant is in possession of and is carrying on the business through the suit premises or whether the suit premises have once again sub-let for the purposes of hefty commercial gains. In any case, Mr. Deo points out that the suit premises are comprising of two shops ad-measuring

about 800 sq.ft. on the Mohammed Ali Road, which is a very busy commercial area in Mumbai. Mr. Deo contends that the Report of S.B. Associates submitted by the tenant has deducted 60% towards depreciation, which deduction was totally unwarranted, in the facts and circumstances of the present case. The suit premises are being used for commercial purposes and in such a situation, the age of the building is not a very relevant factor. For all these reasons, Mr. Deo submitted that reasonable compensation should be around Rs.2 Lacs per month.

4] Having heard the learned counsel for the parties and perused the record, at the outset, there is no question of grant of any relief to the tenant in Writ Petition No. 5688 of 2015. This is because the impugned order has determined compensation at the rate of Rs.50,000/- per month, when the Report submitted by S.B. Associates for and on behalf of the tenant had itself suggested that the Cumulative Fair Notional Rent in respect of suit premises would be in the range of Rs.40,000/- to Rs.50,000/- per month. In these circumstances, it can be hardly regarded that the tenant complains against the determination of the compensation at the rate of Rs.50,000/- per month, particularly when the suit premises are

being used for commercial purposes. Accordingly, Writ Petition No. 5688 of 2015 is dismissed.

5] In so far as the landlords' petition is concerned, there are basically two reliefs applied for :-

(a) That some restraint order be imposed upon the tenant, in the matter of parting with possession of the suit premises as well as creation of any third party rights therein during the pendency of appeal before the Trial Court;

(b) Enhancement of compensation to Rs.2 Lacs per month in place of Rs.50,000/- per month determined by the Appeal Court.

6] On the first aspect, Mr. K.D. Jha, learned counsel for the tenant stated that it is the tenant M/s. Shree Durga Trading Co.(appellant before the Appeal Court) who is very much in possession of the suit premises and that there would be no difficulty whatsoever in furnishing an undertaking to the Appeal Court that the possession of the suit premises will not be parted, nor will any third party rights be created therein. Mr. Jha also pointed out that very seeking of such

relief by the petitioners-landlords is unjustified and only intended to create some prejudice. Mr. Jha pointed out that already the impugned order dated 21 April 2015 restrains the tenant from parting with possession and / or creating third party rights in respect of suit premises till the decision of appeal.

7] There is some merit in the submission of Mr. Jha. In the impugned order dated 21 April 2015, there is already a restraint imposed upon the tenant in the matter of parting with possession or creating any third party rights in the suit premises till the decision in the appeal. However, considering the other material on record, it would be appropriate, if directions are issued to the tenant to file an affidavit-cum-undertaking before the Appeal Court within a period of four weeks from today, stating therein that it is only the tenant (M/s. Shree Durga Trading Co.) who is in possession of the suit premises and that the tenant will not part with possession or create any third party rights in respect of the suit premises till the decision in the appeal. The tenant is accordingly, directed to file such affidavit-cum-undertaking within four weeks from today. This shall be one of the conditions for continuing in possession of the suit premises despite the decree of eviction dated 30 September 2014.

Such direction, would sufficiently take care of the first grievance of the landlords.

8] On the aspect of enhancement, there is substance in the contention of Mr. Deo that determination of Rs.50,000/- in the context, can hardly be regarded as reasonable, particularly if the law laid down by the Apex Court in cases 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 is to be complied with. As noted earlier, the suit premises together admeasure around 800 sq.ft and are located on the busy commercial Mohammed Ali Road in Mumbai. The tenant, presently, is said to operate therefrom 'Glaem, The Beauty Shoppe', which is commerce dealing with cosmetics and beauty products. The contention that since the premises are located very close to Noor Hospital and there are issues in relation to the parking, beggars or crowds cannot be accepted. Despite these, so called hindrances, the tenant claims to have diversified into the the present business of beauty and cosmetic products. There is some material which suggests that in the past some establishment under the trade name

1 2005(1) SCC 705

2 2009(5)ALL MR 1001

Nasir Gold was operating through the suit premises. In the eviction decree made by the Trial Court, on 30 September 2014, there is reference to the consent terms entered into between the tenant and M/s. Usha International Limited on basis of which, the later agency was paid Rs.12 Lacs to restore the possession of the suit premises to the tenant. No doubt, as contended by Mr. Jha that there are explanation for all these transactions, which according to Mr. Jha were only '*conductor agreements*' and not sub-leases. This is hardly the occasion to comment upon all such transactions, particularly as the matter is at large before the Appeal Court. Nevertheless, whether such transactions are conductor agreements or not, it is hard to believe that the tenant has not made any commercial gains from out of such transactions. This is of course, only a *prima-facie* observation but the same is certainly relevant in the matter of determination of reasonable compensation.

9] The Report submitted by Harshad S. Maniar, Chartered Engineer, Surveyor and Registered Estate Valuer make reference to several methods for the purposes of determining reasonable compensation. There is reference to comparable instances. There is reference to Ready Reckoner made by the Government and on such

basis, the Valuers have arrived at figure of Rs.2,08,800/- per month as being the reasonable compensation in respect of suit premises. The criticism that the age of building and consequently depreciation has not been considered is also quite unfounded. In fact, there is substance in the contention of Mr. Deo that S.B. Associates Report, which was produced and relied upon by the tenant has laid undue emphasis upon the age of building and the consequent depreciation. Despite such exercise, even S.B. Associates could not recommend any rate lesser than Rs.40,000/- to Rs.50,000/-. Upon consideration of the Report submitted by Harshad Maniyar as also other relevant circumstances, including purported use of commercial purposes by the tenant, in my judgment, it would be appropriate if the reasonable compensation is determined at Rs.1,20,000/- per month in place of Rs.50,000/- per month as determined by the Appeal Court. This is because, even if substantial allowance is made for the age of building and depreciation awarded therefor, it would be reasonable to determine the compensation at the rate of Rs.1,20,000/- per month as against Rs.2 Lac determined by Harshad Maniyar.

10] Accordingly, Writ Petition No. 7123 of 2015 is allowed to the aforesaid extent.

11] These petitions are, therefore, disposed of with the following order:

- (a) Writ Petition No. 5688 of 2015 is dismissed and Rule is discharged;
- (b) Writ Petition No. 7123 of 2015 is partly allowed and Rule is made partly absolute;
- (c) The amount of Rs.50,000/- per month in the impugned order dated 21 April 2015 shall stand enhanced to Rs.1,20,000/- per month ;
- (d) Further, the tenant, i.e., M/s. Shree Durga Trading Company, shall file an affidavit-cum-undertaking, within a period of four weeks from today, in terms of directions contained in paragraph '7' of this judgment and order;
- (e) It is made clear that the deposit of reasonable compensation at the rate of Rs.1,20,000/- per month effective from 1 October 2014, as also the filing and abiding with the affidavit-cum-undertaking as aforesaid, shall be a condition for interim relief staying the execution of the eviction decree

dated 30 September 2014. In case of any breach, such interim relief to stand vacated. The landlords shall be at liberty to apply the Appeal Court in this regard;

(f) The request of Mr. Jha, time for deposit of arrears towards compensation, is extended upto 31 August 2015;

(g) It is further clarified that if any, amounts have already been deposited by the tenant, then the tenant shall be entitled to credit for the same;

(h) All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)