

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6403 OF 2014

Atul Kisanrao Girme

..Petitioner

Vs.

Vasant Vishnu Mahajan
(Since Deceased) Through his L.Rs.
Sharad Vasant Mahajan and Ors.

..Respondents

....

Mr. A.S. Khandeparkar a/w Mr. Amogh Karandikar and Rakesh Pathak, Advocates i/b Khandeparkar & Ass. for Petitioner.
None for Respondents.

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CORAM : N.M. JAMDAR, J.
DATED : 28 APRIL 2015

ORAL ORDER:

By this petition, the petitioner challenges the order dated 17 June 2014 passed by the District Judge, Pune granting the application filed by the respondents direction the petitioner to pay Rs.10,000/- per month as compensation, during the pendency of the appeal.

2. The suit property is a commercial shop admeasuring 250 sq.ft. in Chinchwad, Pune. The respondents had instituted a Civil Suit No. 45/2009 in the Small Causes Court, Pune. The suit was

decreed by the Small Causes Court, Pune, on 18 January 2014. Thereafter the petitioner filed an Civil Appeal No. 147/2014 in District Court, Pune. The petitioner made an application for stay of the judgment and decree passed by the Small Causes Court, Pune. The respondents also made an application to direct the petitioner to pay the compensation of Rs.25,000/- per month. In view of the law laid down in the Apex Court in the case of *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.*¹, by the impugned order the learned District Judge has directed the petitioner to pay an amount of Rs.10,000/- per month towards compensation.

3. Notices were issued in the petition on 8 July 2014 and ad-interim relief was granted to the petitioner on the condition that the petitioner deposits the sum of Rs.25,000/- within period of two weeks. The learned Counsel for the petitioner states that the amount has been so deposited. He also states that the order of this Court was produced in the Appeal Court and the respondents are aware of the order, as well as pendency of this petition. Notices have also been served on respondents. Considering the facts and circumstances of the case, I propose to remand the proceedings back to the Appeal Court. The petition is taken up for disposal.

4. In the application filed by the respondents, the respondents had prayed that Rs.25,000/- towards compensation be fixed. The petitioner had objected stating stated that there is no

¹ (2005) 1 SCC 705

evidence at all produced by the respondents. No documents or deeds in respect of the surrounding properties were produced.

5. In the impugned order, the learned judge has only stated that considering the market value of the property, compensation of Rs.10,000/- per month is just and proper. There is no reference to any document whatsoever. If the respondents have not placed any material on record, the learned Judge ought to have directed the respondents to furnish adequate material. In absence of any material, fixation of compensation would be reduced to a completely arbitrary exercise. Though while fixing the compensation, the Court has to adopt common sense approach, still there must be some material on record to get an idea of the prices. Other wise the fixing of compensation will be in the realm of pure guess work or conjecture. It is on this ground remand is necessary.

6. It may be that the compensation at Rs.10,000/- ultimately may turn out to be correct. But still the process of fixation must be followed. I would not, in writ jurisdiction ordinarily interfere with such fixation, unless it appears perverse, but only after being assured that the Court of first instance had some material before it. On this ground alone, the order needs to be set aside.

7. The learned Counsel for the petitioner also submitted that the learned Judge could not have directed the petitioner to pay

compensation from the date of filing suit as such direction is not contemplated in the decision of *Atma Ram Properties* (supra). Thus there appears to be one more fault in the impugned order.

8. Accordingly, the impugned order dated 17 June 2014 is quashed and set aside. The application filed by the respondent below Exhibit 10 stands restored to file. The learned District Judge will dispose of the application within period of six weeks from receipt of writ of this Court. It will be open to both the parties to produce material on record in respect of their rival contentions which are expressly kept open. Till disposal of the application and subject to further orders be passed by the learned District Judge, ad-interim order granted by this Court on 8 July 2014 to continue.

9. Writ Petition is disposed of in above terms.

(N.M. JAMDAR, J.)