

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10160 OF 2014

Niraj Shailesh Gandhi & Ors. .. Petitioners
VS.
Unit Tex Products Pvt. Ltd. & Ors. .. Respondents

Mr. P. K. Dhakephalkar – Senior Advocate i/b. Mr. N. P. Shimpi for
Petitioners.

Mr. Harish Bhambani and Ms M. Nandu i/b. J. Sagar Associates
for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 01 SEPTEMBER 2015

P.C. :-

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

2] The challenge in this petition is to the determination of
compensation by the Appeal Court at the stage of grant of interim
relief restraining the petitioners from executing the eviction decree
against the respondents. The Appeal Court, by order dated 6 May
2014 has granted interim relief, subject to the respondents
depositing monthly compensation at the rate of Rs.1,00,000/- during
the pendency and final disposal of the appeal.

3] Mr. Dhakephalkar, the learned Senior Advocate appearing for the petitioners has submitted that the suit premises in the present case is Apartment No. 4 situate in Palmera Building, Altamount Road, Malabar Hill, having 2,517 sq. ft. of carpet area. Mr. Dhakephalkar submitted that the petitioners had produced on record valuation report as also leave and licence agreements in respect of Apartment Nos. 3 and 5 in the very same building, from which, it was clear that the compensation which the suit premises would have fetched would be Rs.4,25,000/- per month. In such circumstances, Mr. Dhakephalkar submitted that the Appeal Court was manifestly wrong in determining compensation at Rs.1,00,000/- per month on the sole ground that the determination ought not to be punitive.

4] On the other hand Mr. Harish Bhambani, the learned counsel appearing for the respondent no. 1 submitted that there is no error of jurisdiction in the impugned determination. The Appeal Court, after taking into consideration, the relevant circumstances has determined reasonable compensation at Rs.1,00,000/- per month. The learned counsel submitted that any amount, higher than Rs.1,00,000/-, might render the same punitive and therefore, there is no case made out to interfere with the impugned order.

5] Having considered the rival submissions and perused the material on record, it must be noted that the Appeal Court has not even bothered to discuss the effect of the valuation report and the two leave and licence agreements in respect of Apartment Nos. 3 and 5 in the very building in which the suit premises are located. Incidentally the suit premises comprised Apartment No. 4 and therefore compensation fixed in the leave and licence agreements in respect of the Apartment Nos. 3 and 5 constituted relevant and vital material, which appears to have been totally ignored by the Appeal Court.

6] The valuation report also makes reference to the leave and licence agreements in respect of Apartment Nos. 3 and 5. In respect of Apartment No. 3 the monthly compensation is Rs.3,52,000/- per month and there is a provision that the compensation for the entire term is to be paid in advance. In respect of Apartment No. 5, the monthly compensation is in the range of Rs.4,00,000/- per month. Such material, if considered, it is clear, that the determination of Rs.1,00,000/- per month, is by no means legal and proper.

7] On the aspect of the amount of compensation not being punitive, it is to be noted that the respondents in the present case

are Companies, engaged in the business of Shipping. It does not appear to be the case of the two Companies also that they cannot afford to pay compensation at the rates prevalent in the market. Besides, the requirement, according to the decision of the Apex Court in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*¹ is for deposit of reasonable compensation. In these circumstances, the Appeal Court, on the basis of material on record, was required to determine reasonable compensation in respect of the suit premises.

8] The record indicates that the suit premises are located in a prime area of Mumbai. The suit premises admeasure 2,517 sq. ft. (carpet area) which is equivalent to 3,020.4 sq. ft. (built up area). The suit premises also include garage bearing no. 6 on the ground floor which itself admeasures 194 sq. ft. (built up area). Taking into consideration all these circumstances, including in particular the circumstance that Apartment Nos. 3 and 5 have fetched compensation in the range of Rs.3,50,000/- to Rs.4,00,000/- per month, it would be appropriate if the respondents are directed to deposit by way of reasonable compensation an amount of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand) per month in respect of the suit premises. Save such modification, the rest of the order dated 6 May 2014 to remain undisturbed. The

1 (2005) 1 SCC 705

difference in compensation amount to be deposited within a period of eight weeks from today.

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

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

(M. S. SONAK, J.)

Chandka

C E R T I F I C A T E

"I certify that this Order uploaded is a true and correct copy of original signed Order."

Uploaded by :
Dinesh S. Sherla
P.A. to the Hon'ble Judge

Uploaded on: 03 September 2015