

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8048 OF 2015

Prakash Rajaram Dandu .. Petitioner
vs.
Smt. Sayamma Rajaram Dandu .. Respondent

WITH
WRIT PETITION NO. 8049 OF 2015

Rukminibai Prakash Dandu .. Petitioner
vs.
Smt. Sayamma Rajaram Dandu .. Respondent

Mr. Sameer S. Kolge with R. R. Adep for Petitioner.
Mr. Tushar Dahibawkar for Respondent.

CORAM : M. S. SONAK, J.
DATE: 07 OCTOBER 2015

P.C. :-

1] These two petitions can be disposed of with the common order.

2] The challenge in these petitions is to the orders dated 30 April 2015, by which the Petitioners have been granted a stay by the Appeal Court upon the execution of eviction decree subject to the condition that the Petitioners deposit compensation at the rate of Rs.6,000/- per month from the date of decree till disposal of the appeal. Liberty is also granted to the Respondent landlord to withdraw contractual rent per month from out of the compensation.

3] The grievance of the Petitioners is only to the determination

of compensation at the rate of Rs.6,000/- per month. The learned counsel for the Petitioners states that the determination is exorbitant and there is no material on record to sustain the same. The learned counsel for the Petitioners has submitted that the determination is not in accordance with the ruling of the Apex Court in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*¹ and for all these reasons the impugned orders, to the extent they determine compensation at the rate of Rs.6,000/- per month are required to be interfered with.

4] Having heard the learned counsel for the parties and perused the material on record, there is no case made out to interfere with the impugned orders. The Appeal Court has observed that the landlord has filed a valuation report according to which the compensation has to be Rs.6,414/- per month. In contrast, despite opportunity, the Petitioners have not placed any material on record in support of their case that compensation as determined is exorbitant. That apart, the decree of eviction has been made on the ground of continuous non user of the premises for a period of six months prior to the institution of the suit. The eviction decree clearly records that the Petitioners have acquired alternate premises at 1st floor, Building No. 4-6, Shankar Puppala Road, Kamathipura, Mumbai 400008, wherein the Petitioners reside with their family

1 (2005) 1 SCC 705

members. Incidentally, the Petitioner in writ petition no. 8048 of 2015 is the husband of the Petitioner in writ petition no. 8049 of 2015. Two separate petitions have been filed as the Petitioners are tenants in respect of two separate premises situate in adjacent buildings attached to one another. The learned counsel for the Petitioners submits that the eviction decree has been challenged before the Appellate Court and therefore, the findings recorded therein are required to be ignored. Although, this is not an occasion to either approve or disapprove the findings in the eviction decree, certainly, *prima facie* credence is required to be given to the findings particularly in the context of non user and acquisition of alternate premises. No material has been placed by the Petitioners on record, at least at this stage, to rebut these findings. In such circumstances, it is clear that there is no jurisdictional error or perversity in the making of the impugned orders. No case is made out to warrant interference under Article 227 of the Constitution of India.

5] It is however made clear that the observations made in this order are only *prima facie* and for the purposes of examining whether the compensation directed to be deposited is reasonable or not. Accordingly, the Appeal Court need not be influenced by the observations made in this order, when it comes to deciding the appeals. As the appeals will have to be decided on their own merits

and in accordance with law. All contentions of all parties are left open for decision by the Appeal Court.

6] The Petitioner has, in pursuance of the orders made in these petitions already deposited amount of Rs.1,00,000/- each in the two petitions. The learned counsel for the Petitioners seeks extension of time by at least two months for the purposes of depositing the balance arrears. Accordingly, time for deposit of balance arrears is extended by a period of two months from today.

7] However, the Petitioners to continue to deposit compensation at the rate of Rs.6,000/- per month as directed by the Appeal Court without any default. In case the arrears are not cleared within a period of two months from today, the execution proceedings already initiated can proceed.

8] These petitions are dismissed. There shall be no order as to costs.

9] 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.”