

Sequeira

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

***CIVIL APPLICATION NO. 385 OF 2013
IN
CIVIL REVISION APPLICATION NO. 406 OF 2011***

Mrs.Feroza Parvez Driver & anr.	.. Applicants
<i>In the matter of</i>	
Hindustan Petroleum Corporation Ltd.	.. Applicant
Vs.	
Mrs.Piroza Parvez Driver & anr.	.. Respondents

Mr.P.J.Thorat, for Applicants-org. Respondent Nos.1 & 2.
Ms Pallavi Dabholkar, for org. Applicant in CRA No.406 of 2011.

***CORAM: N.M.Jamdar, J.
Thursday 30 April, 2015***

PC :

By this application, the Applicants pray that pending the Revision Application, the Respondents-original Applicant be directed to pay compensation as a condition for continuation of interim relief.

2 The Applicant, the landlord of the premises instituted a suit bearing T.E.Suit No.91/101 of 2001 in the Small Causes Court, Mumbai. The suit was decreed on 11 June 2004 and the Respondents / original Applicants were directed to hand over possession. The Small Causes Court also directed inquiry as to *mesne* profits. The Respondent filed an appeal before the Appellate

Bench of Small Causes Court, which was dismissed. Thereafter the present Revision Application was filed which was admitted on 20 September 2011 and an interim order was granted.

3 The Applicants have thereafter taken out this present Civil Application for fixing up compensation in view of the decision of Apex Court in the case of **Atmaram Properties (P) Ltd. Vs Federal Motors (P) Ltd.** - 2005 (1) SCC 705.

4 The Applicants have placed on record valuation report. According to the valuation report, the market value i.e. monthly returns could be around Rs.2,56,000/-. The valuer has taken into consideration the stamp duty ready reckoner. No documents are placed on record by the Respondent. The only contention that is made by the learned counsel for the Respondent is that in Civil Revision Application No.875 of 2011 filed by the Respondent against the orders passed in *mesne* profits inquiry this Court has directed the Petitioner to deposit an amount of Rs.46,614/- with liberty to the Applicants to withdraw the same and therefore, the compensation as sought today need not be granted. It is also contended that the Respondent is a public body.

5 Even though Rs.46,614/- were fixed in Revision application No.875 of 2011, was an independent proceedings as regards *mesne* profits and it was as a condition to the stay granted therein. Present Civil Application is in respect of eviction decree. Even in the order dated 14 February 2014, the amount of Rs.46,614/- is

fixed without prejudice to the contentions of the Applicant to seek compensation.

6 The valuation report has gone uncontroverted. Perusal of the report shows that it is based on sound foundation. However, the fact that Respondent is a public body cannot be ignored. Therefore, I am not inclined to grant compensation at the rate of Rs.2,56,000/- as prayed for. I am of the opinion that grant of Rs.1,00,000/- per month would be fair and proper, considering the fact that Rs.46,614/- per month already directed to be deposited. The amount of Rs.1,00,000/- shall be over and above the amount of Rs.46,614/-. Accordingly, the Civil application is allowed. The compensation is fixed at the rate of Rs.1,00,000/- (in addition to Rs.46,614/-) to be payable from 20 September 2011. The Respondent shall keep paying the amount of Rs.1,00,000/-(in addition to Rs.46,614/-) henceforth, every month. As far as arrears are concerned, the Respondent is granted three months time to deposit the same. As regards withdrawal of the amount, the learned counsel for the Applicant states that he will make a separate application, which will be decided on it's own merits.

The Application is disposed in above terms.

(N.M.Jamdar, J.)