

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7446 OF 2013

The New India Assurance Co. Ltd. .. Petitioner
vs.
Ramanlal Jagjivan Gokal & Ors. .. Respondents

Mr. V. Y. Sanglikar for Petitioner.
Ms Ranjana Parikh for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 30 JUNE 2015

P.C. :-

1] This petition challenges order dated 15 June 2013 made by the appellate bench of the Small Causes Court determining mesne profits at the rate of Rs.90/- per sq. ft. per month. The expert who was examined on behalf of the respondent - landlords had determined mesne profits at the rate of Rs.98.74 per sq. ft. per month. On the other hand, the expert appointed by the petitioner determined the mesne profits at the rate of Rs.77.60 per sq. ft. per month as being fair and reasonable.

2] The appeal Court, has virtually taken an average of the two and determined the rate at Rs.90/- per sq. ft. per month.

3] There is a material on record which indicates that the instances relied upon by the respondent - landlords pertain to the premises which are within the radius of about two kilometers from the suit premises. The petitioner's expert, on the other hand has made reference to Ready Reckoner. Mr. Sanglikar, on basis of instructions from the petitioner has made a statement that the petitioner would be agreeable to pay mesne profits at the rate of Rs.80/- per sq. ft. per month, even though, the expert engaged by the petitioner had suggested the rate of Rs.77.60 per sq. ft. per month. In determining mesne profits, market rate as well as the reasonable losses which the landlord may have sustained due to the deprivation of use of the suit premises are required to be taken into consideration. Some allowance also has to be made to the circumstance that the instances referred to by the respondent - landlords have some distinguishing features and therefore, it is not possible to accept the rate thereof in its entirety. Therefore, upon cumulative consideration of all such relevant factors, it would be appropriate if the rate is determined at Rs.80/- per sq. ft., per month, which is incidentally the rate now agreed by the petitioner.

4] Accordingly, the impugned orders are interfered to the limited extent and the rate of Rs.90/- per sq. ft. per month is reduced to Rs.80/- per sq. ft. per month. Save and except this modification, the order impugned is confirmed.

5] The respondents, shall accordingly be permitted to withdraw from out of the amounts deposited / secured by the petitioner mesne profits determined at the rate of Rs.80/- per sq. ft. per month along with proportionate interest thereon as awarded by the Small Causes Court. The balance amount shall be refunded to the petitioner.

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

(M. S. SONAK, J.)

Chandka