

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8677 OF 2015

Mrs. Laxmibai P. Kale .. Petitioner
VS.
M/s. Rainbow Real Estates Pvt. Ltd. .. Respondents

Mr. Ashok Pande for Petitioner.
Mr. G. S. Godbole i/b. J. P. Consultia for Respondents.

CORAM : M. S. SONAK, J.
DATE: 20 OCTOBER 2015

P.C. :-

- 1] Rule. Rule is made returnable with the consent of the parties.
- 2] The challenge in this petition is to the order dated 5 May 2015, in so far as it imposes a condition for deposit of Rs.12,000/- per month for availing interim relief restraining execution of eviction decree.
- 3] Mr. Pande, the learned counsel for the Petitioner points out that in respect of same premises in the very same area, the Appeal Bench has determined compensation at the rate of Rs.1,000/- per month and therefore there was absolutely no justification in determining reasonable compensation at the rate of Rs.12,000/- per month in the present case. Mr. Pande points out that the suit

premises are located at Dharavi, which is a slum area, and compensation at the rate of Rs.12,000/- per month is neither proper nor justified.

4] On the other hand, Mr. Godbole, the learned counsel for the landlord invited attention to the Commissioner's Report at page 60 of the paper book, in which the dimensions of the suit premises, as also the purposes for which the suit premises are put to use have been set out. Mr. Godbole submitted that in the facts and circumstances of the present case determination of reasonable compensation by the Appeal Court was both legal and proper. Although, in the present case, the suit premises are indicate to admeasure 150 sq. ft, the Commissioner's Report indicates that the suit premises comprised two storeys. Therefore, if the area of both the storeys is considered, then the same would be much in excess of 150 sq. ft. Besides, the Commissioner's Report indicates that the suit premises are being used for commercial purposes, i.e. leather industry. There are photographs on record which *prima facie* bears out this position. There are also documents on record in the form of Registration Certificate under the Shops and Establishment Act. However, considering the circumstance that in respect of similar premises in the vicinity, compensation has been determined at Rs.1,000/- per month, the compensation at the rate of Rs.12,000/-

per month appears excessive. No doubt, Mr. Godbole is right that each case will have to be determined on its own facts. In the matter of determination of reasonable compensation, regard is also required to be had to the payment capacity of the tenant. Therefore, upon consideration of all such circumstances, it would be appropriate if compensation is determined at Rs.8,000/- per month instead of Rs.12,000/-.

5] Accordingly, compensation is determined at Rs.8,000/- (Rupees Eight Thousand) per month. The impugned order dated 5 May 2015 is modified to the said extent only.

6] Time for deposit of arrears is extended by four weeks from today.

7] Rule is made absolute to the aforesaid extent only. In the facts and circumstances of the present case, there shall be no order as to costs.

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

(M. S. SONAK, J.)