IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.589 OF 2015
IN
CIVIL REVISION APPLICATION NO.531 OF 2012

Prime Properties Pvt.Ltd. ..Applicant

<u>IN THE MATTER BETWEEEN</u>

F.S.Kerr & Co.Pvt.Ltd. ..Petitioner
V/s.
N.M.Wadia Charities & Ors. ..Respondents

Mr.Vineet Naik Senior Advocate a/w Mr.Mayur Khandeparkar and Mr.Prateek Pai i/by Keystone Partners for the Applicant.
Mr.R.V.Pai a/w Mr.A.R.Pai i/by Mr.V.V.Pai for Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 27th NOVEMBER, 2015.

P.C.

1. The above Civil Application has been filed inter alia for the following substantive reliefs:-

> "(a) Pending the hearing and final disposal of the present Civil Revision Application, this Hon'ble Court be pleased to direct the Petitioner to deposit a monthly compensation calculated at a rate of Rs.4,88,400/- (Rupees Four Lakh Eighty Eight Thousand Four Hundred Only) per month from 04th May, 2012 till 31st December, 2013 or such other

date as this Hon'ble Court deem fit and proper and as a rate of Rs.5,18,000/- (Rupees Five Lakh Eighteen Thousand Only) per month from 1st January, 2014 till the Petitioner hands over quiet, vacant and peaceful possession of the entire Suit Premises to the Applicant herein or such other date as this Hon'ble Court deem fit and proper;

(b) That this Hon'ble Court be pleased to allow the Applicant to withdraw the amount of monthly rent as may be deposited by the Petitioner in this Hon'ble Court without furnishing any security;

(c) For ad-interim-reliefs in terms of prayer clauses (a) and (b);

(d) For costs;

(e) For such other and further reliefs as this Hon'ble Court may deem fit.”

2. The Applicant i.e. original Respondent No.6 to the Civil Revision Application has, therefore, prayed that the original Civil Revision Applicant be directed to pay monthly compensation at the rate of Rs.4,88,400/- per month from 04th

May 2012 till 31st December 2013 and at the rate of Rs.5,18,000/- per month from 01st January 2014 till the original Civil Revision Applicant hands over the suit premises to the Applicant herein i.e. the original Respondent No.6 in the Civil Revision Application.

3. The above Civil Revision Application No.531 of 2012 has been admitted by a learned Single Judge of this Court on 05th February 2014 and interim reliefs in terms of prayer clause (c) has been granted. The above Civil Application has been filed relying upon the judgment of the Apex Court in *Atma Ram Properties (P) Ltd. V/s. M/s. Federal Motors Pvt. Ltd. Reported in (2005) 1 SCC 705* wherein the Apex Court has held that the tenant who seeks stay of an eviction decree can be put to terms if he challenges the decree in the higher Court. It is on the said basis that the Applicant has claimed interim compensation at the rates which has been referred to herein above which find a place in prayer clause (a) of the Civil Application.

4. In support of the said claim for interim compensation, reliance is sought to be placed on two reports obtained by the Applicant from Shri.Harshad S. Maniar, Chartered Engineer and Registered Estate Valuer which are dated 17th August 2011 and 22nd July 2014 respectively. Insofar as the report dated 17th August 2011 is concerned, in the said report, the situation and location of the suit premises have been mentioned and the landmarks in the locality have been mentioned, which landmarks are the Stock Exchange Building, High Court and City Civil Court Building and the Horniman Circle, etc. Thereafter to arrive at the fair market rental in respect of the premises in question the valuer has by Indicator no.1 referred to the Leave and Licence Agreement dated 09-06-2009 executed between Kalpataru Properties Pvt.Ltd. and Bank of Baroda who are the licensee's and after giving credit for the interest free deposit which has been mentioned in the said Indicator has by the method of calculation which finds place in the said Indicator has arrived at the figure of Rs.205/- per sq.ft. per month.

5. The next Indicator is Indicator no.2 wherein the same Kalpataru Properties Pvt.Ltd. has granted on licence basis the premises to HDFC Bank Ltd., in which Indicator also after giving credit for the interest free deposit of Rs.51,46,920/-, the final figure which has been arrived at is Rs.170.82 per sq.ft. per month.

6. Indicator no.3 is in respect of the licensee, one Mr.R.K.Swami, B.B.D.O. Pvt.Ltd., in whose favour licence has been granted by one R.D.Shethna Scholarship Fund in respect of the office premises on the ground floor of the building known as “Esplanade House”. After giving credit for the interest free deposit of Rs.31,51,050/-, the figure arrived at is Rs.174/- per sq.ft. per month. Hence, by the above Indicators which are all in respect of the registered Leave and Licence agreements, the rates per sq.ft. per month are Rs.205/-, Rs.188/- and Rs.174/-.

7. Now coming to the report dated 22nd July 2014, the said report is on the basis of the depreciated value of the

building in question arriving at the figure of Rs.10.40 per sq.ft. per month. This according to the learned Senior Counsel appearing on behalf of the Applicant, is by adopting straight line method whereby the depreciation is taken into account.

8. The said report dated 22nd July 2014 also has three Indicators. Indicator no.1 is in respect of Leave and Licence Agreement between one Jamshed K. Delvadavala and another in favour of M/s.Sharp and Tannan (Goa) in respect of building which is in the vicinity of the building wherein the suit premises are situated. The figure arrived at is Rs.177.66 per sq.ft. per month.

9. The next Indicator i.e. Indicator no.2 is in respect of the licence created in favour of one Western India Regional Council of Association of National Exchanges Members of India in whose favour licence is created by M/s. Rathi Associates in respect of the premises in Veena Chambers which is also a building in the vicinity and after giving credit for the interest free deposit of Rs.2,40,000/-, the figure arrived at per sq.ft.

basis is Rs.154.63 per sq.ft. per month.

10. The last Indicator that is Indicator no.3 is in respect of the licence created in favour of Bajaj Allianz Life Insurance Co. Ltd., by one Mr.Rachit Parkeh and Another in respect of premises in the building known as “Old Oriental Building” which is also in the near vicinity of the suit premises and after giving credit for the interest free deposit of Rs.13,18,000/-, the figure arrived at is Rs.167.88 per sq.ft. per month. Hence, in terms of the second report dated 22nd July 2014, in terms of the Indicators therein, the figures are Rs.177.16 per sq.ft., Rs.164.63 per sq.ft. and Rs.171.87 per sq.ft. of which average is Rs.167.88 per sq.ft. and it is mentioned that the average for the upper floors is Rs.132 per sq.ft.

11. Insofar as the first report of Shri Maniar is concerned, the same is on basis of the built-up area whereas the second report is on the basis of the carpet area. It is required to be noted at this stage that the original Civil Revision Applicant i.e. Respondent no.1 to the above Civil

Application has not filed any valuation report. The above Civil Application for the reliefs which have been adverted to hereinabove has been replied to on behalf of Respondent no.1. The report is sought to be questioned on the ground that the depreciated value has not been properly calculated. The reports are also sought to be questioned on the ground that the valuer has not personally visited the suit premises. It is also stated in the reply that the Applicant who is the landlord of the building in question has put up various impediments in the way of Respondent no.1 herein for putting the premises to beneficial use. The correspondence exchanged between the parties has been referred to as also the complaints made to the police on account of the obstruction allegedly created on behalf of the landlord in the Respondent no.1 taking steps to carry out tenantable repairs. However, the learned counsel appearing for the Respondent no.1 fairly stated that the Respondent no.1 is a export house and is at present carrying out business in the premises in question. The learned Senior Counsel appearing on behalf of the Applicant sought to counter the case made out in the affidavit-in-reply which was sought to be put across the bar by the learned counsel appearing for Respondent no.1. The learned Senior Counsel would contend that the repairs permission was granted to Respondent no.1 on the usual undertaking which a tenant would have to furnish to the landlord before venturing to undertake the tenantable repairs. In my view, it is not necessary at this stage to go into the said aspects as admittedly, the premises in question are being put to use by Respondent no.1 for carrying out its business. The question is as to what terms are required to be imposed on the Civil Revision Applicant by way of fixing the interim compensation pending the above Civil Revision Application. It is required to be noted that the reports of Shri Harshad S. Maniar are inter alia based on the registered Leave and Licence Agreements amongst which are at least two agreements which relate to banking institutions i.e. Bank of Baroda and HDFC Bank Ltd as also one relating to Bajaj Allianz Life Insurance Co. Ltd. As indicated above, the building wherein the premises covered by the other Leave and Licence Agreements are concerned are situated in the close vicinity of the building in which the suit premises are situated. The building in which the suit premises are situated is in Flora Fountain which is a commercial area in South Mumbai. The building is 80 years old. The two licence agreements are in respect of premises in the same building and at the rate arrived at per sq. ft. in respect of Bank of Baroda is Rs.205/- per sq.ft. per month for built-up area and in respect of HDFC Bank Ltd., it is Rs.188/- per sq.ft. per month of built-up area. In respect of Bajaj Allianz, the rate arrived at is Rs.168/- per sq.ft. per month of the carpet area.

12. In my view, taking into consideration the reports of Shri Harshad S. Maniar which as indicated above refer to the Leave and Licence Agreements which have been adverted to hereinabove, the interest of justice would be served if pending the hearing and final disposal of the above Civil Revision Application, Respondent no.1 i.e. the original Civil Revision Applicant is directed to deposit monthly compensation at the rate of Rs.100/- per sq.ft. per month of the built-up area. The Civil Application is, accordingly, disposed of by issuing the following directions:-

(i) The Respondent no.1 to deposit in this Court interim compensation at the rate of Rs.100/- per sq.ft. per month for the area of 3700 sq.ft., pending the hearing and final disposal of the above Civil Revision Application the same would be from 05th February 2014. The said deposit would be without prejudice to the rights and contentions of the parties.

(ii) Insofar as the amount to be deposited for the period February 2014 upto November 2015 is concerned, the said amount to be deposited in this Court within 12 weeks from date.

(iii) Insofar as the amount to be deposited from December 2015 onwards is concerned, the same is to be deposited on/or before 10th of each succeeding month.

(iv) If Respondent no.1 desires to carry out any tenantable repairs, it can do so after giving prior intimation to the landlord i.e. the Applicant herein who would not obstruct such tenantable repairs. Except tenantable repairs, no other repairs are permitted.

(v) After the amount is deposited, the Applicant would be at liberty to apply for withdrawal of the same and if any such application is made, the same would be considered on its own merits by the concerned Court.

(vi) The hearing of above Civil Revision Application no.531 of 2012 is now followed by Civil Revision Application no.677 of 2015 which is filed by the Applicant landlord. Hearing of both the Civil Revision Applications is expedited and to be placed for final hearing in the week commencing on 07th March 2016 with liberty to the parties to apply for the Civil Revision Applications to be heard on a fixed date.

(vii) The deposit made by Respondent no.1 herein would undoubtedly be subject to the result of the Civil Revision Application.

At this stage the learned counsel appearing for

Respondent no.1 applies for stay of the order of monthly deposit. In view of the fact that the deposit is to be made in this Court from month to month, which is also without prejudice to the rights and contentions of the parties and also subject to the result of the Civil Revision Application, there is no warrant to stay that part of the order. The said prayer is accordingly rejected.

(R. M. SAVANT, J)