IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 201 OF 2014
WITH
WRIT PETITION NO. 199 OF 2014
WITH
CIVIL APPLICATION NO. 2171 OF 2014
IN
WRIT PETITION NO. 199 OF 2014
WITH
WRIT PETITION NO. 200 OF 2014
WITH
CIVIL APPLICATION NO. 2085 OF 2014
IN
WRIT PETITION NO. 200 OF 2014

Madhavlal N. Pittie .. Petitioner/Applicant
vs.
Shekhar N. Shetty & ors. .. Respondents

Mr. B.N. Shukla i/b. M/s. D.J. Kamdin & Co. for the Petitioner/ Applicant.
Mr.Shardul Singh a/w. Mr. Vaibhav R. Gaikwad for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 14 JULY 2015.

P.C. :-

1] Rule in each of the petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] In all these petitions, the petitioner-landlord challenges the orders made by the Appeal Court granting stay to the eviction decrees subject to the respondent-tenant depositing amount of Rs.10,000/- (in Writ Petition No. 199 of 2014), Rs.9000/- (in Writ

Petition No. 200 of 2014) and Rs.15,000/- (in Writ Petition No. 201 of 2014) as and by way of compensation.

3] Learned counsel for the petitioner has submitted that the Appeal Court, in determining the amount of compensation has ignored not only the rates proposed in the Valuation Reports submitted by the petitioner, but also fails to take into consideration of vital position and important circumstance that the suit premises are being used by the respondent-tenant for commercial purposes, in conjunction with Shagun Hotel (Restaurant) which is located on the ground floor of the building in which two of three suits premises are situated. The third suit premises are situated in the immediately adjoining building. Learned counsel for the petitioner submitted that the suit premises are being used as a hotel and lodging and also for the purposes of restaurant. In these circumstances, the rates as determined by the Appeal Court are unreasonably low and cannot be regarded as reasonable compensation in terms of expression employed by the Apex Court in cases of ***Atma Ram Properties (Pvt.) Limited Vs. Federal Motors Private Limited***[1] and ***State of Maharashtra Vs. M/s. Super Max International Pvt. Ltd.*** [2].

1 2005(1) SCC 705
2 2009(5)ALL MR 1001

4] On the other hand, Mr. Shardul Singh, learned counsel for respondent No.1 submitted that the Appeal Court has merely exercised its discretion and in absence of any perversity or unreasonableness, there is no reason to interfere with such discretionary order in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India. Mr. Shardul Singh further pointed out that the Valuation Reports submitted on behalf of the petitioner make reference to grossly inflated areas and further, the Valuer had relied upon only one method of valuation. Mr.Shardul Singh submitted that in-contrast the Valuation Reports which have been relied upon by the respondent-tenant take into consideration the correct area of suit premises and further more than one methods of valuation have been employed. Accordingly, Mr. Shardul Singh submitted that no case is made out to interfere with the impugned orders.

5] Having heard learned counsel for the parties and perused the record, it is to be noted that the Trial Court has not completely gone by the Valuation Reports submitted by both the parties. The Valuation Reports submitted by the petitioner, the proposed market rents at Rs.33,425/- in Writ Petition No. 199 of

2014 and Rs.56,400/- in Writ Petition No. 200 of 2014 and Rs.96,700/- in Writ Petition No. 201 of 2014. On the other hand, the market rents proposed in the Valuation Reports submitted by and on behalf of the respondent-tenant were Rs.10,000/-, Rs.7958 and Rs.4827/- respectively. The Appeal Court has accepted the Valuation Reports as submitted by and on behalf of the respondent-tenant at least in so far as the suit premises involved in Writ Petition No. 199 of 2014 is concerned.

6] The record indicates that on the ground floor of the building in which the the suit premises are located, the respondent-tenant operates Shagun Restaurant. The suit premises are located on first and third floors of the very same building. In the premises on first floor, it is more than apparent from the material produced on record that the respondent-tenant operates a banquet hall in conjunction with restaurant business on the ground floor. The suit premises on the first floor have been provided with furniture fitting and befitting its use as a banquet hall. This is not only clear from the material on record but also clear from the photographs which were produced by and on behalf of the respondent-tenant at the stage of hearing of these petitions in this Court.

7] In the affidavit-in-rejoinder filed by and on behalf of the respondent-tenant before the Appeal Court, the respondent-tenant went on to deny that he is carrying on business and running/conducting any restaurants, but stated that the premises are of his relatives and people from the town which he hails. The statement is not borne from the other materials on record. The premises on the first floor are the premises involved in Writ Petition Nos.200 and 201 of 2014. In respect of these premises, although the petitioner's Valuer had proposed rents at the rate of Rs.56,400/- and Rs.96,700/-, the Appeal Court has proceeded to determine the reasonable compensation at the rate of Rs.15,000/- and Rs.9000/- respectively.

8] In my judgment, this is clearly a case of ignoring vital and relevant materials on record. In the Valuation Reports submitted by and on behalf of the petitioner, the areas of common passages and areas occupied by toilet blocks, balconies appear to have been taken into consideration. This is not exactly inflating areas of the suit premises, but even if such areas are excluded, the fact remains that the suit premises are being used for commercial purposes as a banquet hall by the respondent-tenant in-conjunction with Shagun

Restaurant which is being operated on the ground floor. The respondent-tenant at least *prima-facie*, does appear to have carried out extensive renovation in the suit premises so as to use the same as banquet hall. These observations are only *prima-facie* and for the purposes of determination of reasonable compensation. Accordingly, the Appeal Court need not be influenced by such observations at the stage of deciding the appeal on its merits. Considering therefore, the area of the suit premises, even as per the Valuation Reports submitted by and on behalf of the respondent-tenant, the determination of compensation by the Appeal Court is unreasonably low. The suit premises are being used full scale for commercial purpose and this vital and relevant circumstance has been completely ignored by the Appeal Court. Therefore, even if the so called increased areas as set out in the Valuation Report submitted by and on behalf of the petitioner are ignored, this is a case where the reasonable compensation ought to have been fixed at Rs.35000/- in so far as suit premises in Writ Petition No. 201 of 2014 are concerned and Rs.20,000/- in so far as Writ Petition No. 200 of 2014 are concerned. In order to fix this amounts, sustenance can be drawn upon the two Valuation Reports on record and also the vital circumstance that the said suit premises are being used as a banquet hall after carrying out extensive renovation. The photographs on record also bear out this position. The impugned orders are therefore, modified to the aforesaid extent in Writ Petition No. 200 of 2014 and 201 of 2014.

9] In so far as suit premises involving in Writ Petition No. 199 of 2014 are concerned, the records indeed indicate that the same is used by the several staff members of respondent-tenant in the connection of the business of Shagun Restaurant and same is situated on the third floor of adjoining building. The circumstance that the staff members use the suit premises for their residence, does not in any manner, detract from the commercial user of the suit premises. From the photographs produced on record, it looks like several waiters, cooks or other staff members are *prima-facie* accommodated in the suit premises of the third floor. Such accommodation obviously has direct and proximate nexus with the business which the respondent-tenant carries out through the restaurant business being run on the ground as well as on the first floor. Accordingly, this is a circumstance which should have been taken into account by the Appeal Court. The compensation amount is therefore, required to be enhanced upto Rs.20,000/-.

10] There is no merit in the submission of Mr. Shardul Singh that in the Valuation Reports furnished by and on behalf of the respondent-tenant more than on method have been employed and therefore, such Valuating Report should be prepared to the Valuation Reports submitted by and one behalf of the petitioner. Question is not of quantitative number of methods employed, but rather quality of method chosen and applied. In this case on basis of the material on record, the Appeal Court could not have determined the compensation at the rate at which it has chosen to make the determination. There is indeed, exclusion of vital and relevant material. There was no consideration of relevant facets as also facts borne by the material on record. Accordingly, this is a fit case for interfering with the impugned orders to the aforesaid extent.

11] Accordingly, the impugned orders are modified. In Writ Petition No. 199 of 2014, the respondent-tenant shall deposit reasonable compensation at the rate of Rs.20,000/- in stead of Rs.10,000/-. In Writ Petition No. 200 of 2014, the respondent-tenant to deposit reasonable compensation at the rate of Rs.20,000/- instead of Rs.9,000/-. In Writ Petition No. 201 of 2014, the respondent-tenant to deposit reasonable compensation at the rate of Rs.35,000/- in stead of Rs.15,000/-.

12] Rule is made absolute to the aforesaid extent in each of the petitions. There shall be, however, no order as to costs.

13] Civil Application Nos.2171 and 2085 of 2014 do not survive and they are disposed of accordingly.

14] At this stage, learned counsel for the respondent-tenant seeks a stay on the implementation of the direction in this order, for a period of eight weeks. The learned counsel for the petitioner opposes the grant of any such relief. However, in my judgment, the respondent-tenant need not make deposits at the enhanced rates, for a period of eight weeks from today. Accordingly, there shall be stay to the said extent.

(M. S. SONAK, J.)

dinesh