

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9262 OF 2014

Shivsahay Jadunath Mishra and Ors.] ... Petitioners

Versus

Shri Dwarkanath Shobhnath Mishra]
 (Since Deceased)]
 Suresh Dwarkanath Mishra and Ors.] ... Respondents

Mr. V. B. Mishra for Petitioners.
 Mr. A. R. Pande for Respondents.

CORAM :- M. S. SONAK, J.

DATE :- JULY 20, 2015

P. C. :-

1. This petition challenges the order dated 26/08/2014 made by the Appellate Bench of the Small Causes Court in determining reasonable compensation at the rate of Rs.26,000/- (Rupees Twenty Six Thousand Only) per month as a condition for stay on the execution of eviction decree dated 25/02/2014.

2. The learned Counsel for Petitioners submits that the principle of Order 41 Rule 5 (3) CPC will apply and not Order 41 Rule 5 (5) because in this case, the trial Court has not passed any decree for payment of money. The learned Counsel for Petitioners further submitted that the Petitioners carry on business of selling newspapers through a stall at Wadala Railway Station and therefore, the

condition, as imposed, would be too onerous. The Hon'ble Apex Court, in the cases of *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd*¹ and *State of Maharashtra and Another Vs. Supermax International Private Limited and Others*², has held that conditions to be imposed should not be so onerous as to render the Petitioner's right of appeal redundant.

3. Mr. Pandey, learned Counsel for Respondents, on the other hand, submitted that the premises in the present case are located at 'A' Road, Churchgate, which is a prime locality insofar as Mumbai is concerned. Valuation report produced by the Respondents indicates that the market rent in the area would be in the range of Rs.33,000/- per month or thereabout. The Appeal Court had determined reasonable compensation at only Rs.26,000/- per month and therefore no interference is warranted.

4. Having heard the learned Counsel for parties and perused the record, although there is no substance in the first contention raised by the learned Counsel for Petitioners, there is case made out for reduction in the rate of reasonable compensation determined by the Appeal Court. Although, on the basis of valuation report submitted by the Respondents, the rate of Rs.26,000/- per month may be proper, the Appeal Court had also to take into consideration the aspect of payment capacity of the Petitioners. The Petitioners in the present case, if required to pay compensation at the rate of

1 (2005) 1 Supreme Court Cases 705

2 (2009) 9 Supreme Court Cases 772

Rs.26,000/- per month, may not be able to successfully prosecute their appeal or at any rate, remain in possession of the suit premises during the pendency of the appeal.

5. There is no reason to accept the contention of the learned Counsel for Petitioners on the basis of the provisions contained in Order 41 Rule 5 of the CPC. The requirement of deposit of reasonable compensation, is not in the basis of direct compliance with the provisions contained in Order 41 Rule 5 of CPC, but rather on the basis of principles analogous thereto. The requirement for deposit is consistent with the law laid down by the Hon'ble Apex Court in the cases of *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd*³ and *State of Maharashtra and Another Vs. Supermax International Private Limited and Others*⁴.

6. Nevertheless, since the material on record indicates that the premises are admeasuring 150 sq.ft. and located in a prime area at Churchgate, compensation at the rate of Rs.20,000/- (Rupees Twenty Thousand Only) would represent the reasonable compensation. In determining this compensation, regard is had to the payment capacity of the Petitioners. The Petitioner No.1 has admitted that his wife has premises at Andheri which are presently being occupied by his children. Besides, the Petitioner also has a stall at Wadala Railway Station through which the Petitioner is engaged in sale of newspapers.

3 (2005) 1 Supreme Court Cases 705

4 (2009) 9 Supreme Court Cases 772

7. Therefore, upon cumulative consideration of the aforesaid circumstances, the impugned order is interfered with to the limited extent by reducing the amount of reasonable compensation from Rs.26,000/- to Rs.20,000/-. With regard to the rest, the impugned order is not interfered with.

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

9. Writ Petition is disposed of in the aforesaid terms.

10. The Petitioners are granted extension of time to deposit the arrears. Let the arrears be deposited on or before 30/09/2015.

(M. S. SONAK, J.)