

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8848 OF 2014

Smt. Joyce Regina Amor.] ... Petitioner

Versus

Smt. Urmila Vinod Motee and Ors.] ... Respondents

Mr. V. A. Thorat, Senior Advocate a/w Mrs. Pratibha Shelke i/b P. J. Thorat for Petitioner.

Mr. Madhav Jamdar for Respondent Nos.1 and 4.

CORAM :- M. S. SONAK, J.
DATE :- JUNE 09, 2015

P. C. :-

1. Mr. Madhav Jamdar has filed appearance on behalf of Respondent Nos.1 and 4. Mr. Jamdar further states that he shall file his appearance on behalf of the remaining Respondents within a period of four weeks from today.

2. This petition is directed against the Order dated 14/08/2014 made by the District Judge-6, Pune, to the extent it requires the Petitioner to deposit Rs.19,000/- as interim compensation for use of the suit premises from the date of the eviction decree till the final disposal of the appeal against the same.

3. Mr. V. A. Thorat, learned Senior Advocate for Petitioner, submitted that the suit premises in the present case are over 100 years old and even the report of the valuer makes reference to rainwater entering in the suit premises. Mr. Thorat submitted that the learned District Judge, in determining the interim compensation, has applied the incorrect tests and the amount so determined, is by no means reasonable. Mr. Thorat submitted that the learned District Judge has placed undue reliance upon the amount of deposit of Rs.1,00,000/- in respect of neighbouring premises and on the said basis, proceeded to determine interim compensation. Mr. Thorat submitted that the rent in respect of the neighbouring premises was hardly Rs.766/- per month and even if, this amount was increased by 10 times, the Petitioner would be required to pay interim compensation of about Rs.7,500/- per month. Relying upon the decision in the case of *Atma Ram Properties (P) Ltd. Versus Federal Motors (P) Ltd.*¹ and *State of Maharashtra and Another Versus Super Max International Limited and Others*², Mr. Thorat submitted that the interim compensation determined by the Hon'ble Apex Court was not in the basis of market rate, but rather market rate was only one of the parameters which was taken into consideration. For all these reasons, Mr. Thorat submitted that the impugned order warrants interference, to the extent it requires the Petitioner to deposit interim compensation of Rs.19,000/- per month.

1 (2005) 1 Supreme Court Cases 705

2 (2009) 9 Supreme Court Cases 772

4. Mr. Jamdar, learned Counsel for Respondent Nos.1 and 4, defended the impugned order, by pointing out that the same is not vitiated by any jurisdictional error or perversity. Mr. Jamdar submitted that it is in fact the Respondents who should be aggrieved with the impugned order, inasmuch as, the material produced by and on behalf of the Respondents has been ignored. Mr. Jamdar submitted that in case such material were to be taken into consideration, then the interim compensation would be even higher than what has been determined by the impugned order.

5. Having heard the learned Counsel for parties and perused the record, admittedly, the suit premises are located on East Street, Camp, Pune, which is one of the prime commercial localities at Pune. The area of the suit premises is 1800 sq.ft. In determining the interim compensation, it cannot be said that the learned District Judge has applied any incorrect test. The learned District Judge has in fact taken into consideration comparable instances in respect of the shops and premises in the immediate neighbourhood. On such basis, the learned District Judge has determined the interim compensation as Rs.19,000/- per month adverting to the contentions of either parties. In the case of *Atma Ram Properties (P) Ltd. Versus Federal Motors (P) Ltd. (supra)*, the Hon'ble Apex Court has laid down that the Appeal Court, while granting the stay on execution of an eviction decree, has the jurisdiction to put the Appellant on such reasonable terms as would, in its opinion, reasonably compensate the decree holder for loss occasioned by delay in execution of the decree. In the present

case, it cannot be said that the interim compensation determined is either unreasonable or that the same has been determined in any arbitrary or fanciful manner. Accordingly, this is not a case where the impugned order suffers from any jurisdictional error or perversity. No case is therefore made out to interfere with the impugned order in the exercise of writ jurisdiction. The Writ Petition is accordingly dismissed. The amount deposited by the Petitioner during the pendency of the present Writ Petition as also the Appeal before the District Court be taken into account by the learned District Judge in the matter of determining compliance with the condition imposed in the impugned order. The period for deposit of the balance amount in terms of the impugned order is however extended by a period of two months from today.

6. Writ Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)