

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2726 OF 2013
IN
WRIT PETITION NO. 3752 OF 2006

M/s. Mazda Theatre Pvt. Ltd. .. Applicant
vs.
Smt. Sushila S. Babu & ors. .. Respondents

Mr. Rupesh Lanjekar for the Applicant.

CORAM : M. S. SONAK, J.
DATE : 17 JUNE 2015.

P.C. :-

1] The applicant in this Civil Application seeks following directions:

(a) The directions to the tenant to deposit in this Court a sum of Rs.1,92,960/- per month towards reasonable compensation from January 2013 during pendency of Writ Petition No. 3752 of 2006;

(b) For directions to the tenant to pay arrears of Rs.2,29,82,400/- towards reasonable compensation from the date of impugned decree till December 2012.

2] In support of the Civil Application, the applicant has placed reliance upon the Valuation Report dated 31 December 2012 permitted by H.Mehta & Associates opining that the market rent for

the suit premises ought to be in the range of Rs.134/- per sq.ft. to Rs.165/- per sq.ft per month. On the basis of the valuation report, the applicant seeks a direction for deposit of Rs.1,92,960/- per month.

3] On last two occasions, neither the tenant nor her advocate are reported to have remained present. Today, when the matter is called out, again, neither the tenant nor her advocate are present. However, there is reply filed by the tenant raising basically two objections. The first objection is that the decree of eviction was made on 24 March 2003 and the interim relief staying the execution thereof was granted by this Court on 19 December 2006. There is delay of over six years, in seeking directions for deposit of reasonable compensation, the objective of such application being to pressurise the tenant to vacate the suit premises. The second objection, is on the basis of comments of Architects & Valuers M/s. Nadkarni & Co. to the valuation report submitted by the applicant.

4] There is delay in seeking directions for deposit of reasonable compensation. At this stage, if the tenant is required to deposit arrears, not towards contractual rent but towards reasonable

compensation which may now be determined, for a period of over six years, then it is possible that such direction may be regarded onerous at this point of time. However, the delay, can obviously be no bar for a direction for deposit from the date of the application, which is September 2013.

5] M/s. Nadkarni & Co., Architects and Valuers, have attempted to criticise the valuation undertaken by H.Mehta & Associates. However, Nadkarni & Co. have not themselves submitted any valuation or suggested any rate, which would represent the reasonable compensation in respect of the suit premises. As of date, the applicant pays compensation of hardly Rs.2000/- per month in respect of a Cafeteria area in Theater premises having carpet area 1200 sq.ft. The Theater and consequently Cafeteria area is located within 10 minutes walking distance from Grant Road Railway Station.

6] H. Mehta & Associates, in determining the market rent have taken into consideration the area of the suit premises, its locality as also several instances, which in their opinion, are comparable instances. There is no alternate valuation report, as such submitted

by and on behalf of the tenant. Based on the material on record, therefore, compensation at the rate of Rs.1 Lac per month would meet to the ends of justice. Reasonable compensation in such matters, need not always be determined exclusively on the basis of market rent alone. There are other relevant factors, which are also required to be taken into consideration. In the present case, as per the valuation report submitted by H.Mehta & Associates, the suit premises are in the nature of a Cafeteria area having a sitting capacity of about 20 persons. The Cafeteria area is located in the Theater. For a period of almost six years, the applicant did not chose to apply for any directions to deposit reasonable compensation. Upon cumulative consideration of such factors, including in particular the circumstance that the condition for deposit ought not to be excessively onerous, the reasonable compensation is determined at the rate of Rs.1 Lac per month.

7] Accordingly, the tenant is directed to deposit in this Court, with effect from September 2013, an amount of Rs.1 Lac per month during pendency of final disposal of the writ petition. The arrears between September 2013 and June 2015 to be deposited within a period of six weeks from today. However, deposit of Rs.1 Lac for the

month of June and July to be deposited on or before 31 July 2015. Once the amount is deposited, the same be invested by the Registrar in a Nationalised Bank.

8] The deposit as aforesaid shall be a condition for the benefit of the interim relief restraining execution of eviction decree granted on 19 December 2006.

9] It is clarified that reference to the expression “*tenant*” in this order shall mean and imply reference to original petitioner, i.e., Smt. Sushila Suresh Babu. Further, such reference is without prejudice to the actual status of the petitioner, since it is the contention of the application that the original petitioner is not the tenant, but has been unlawfully inducted by the original tenants in the suit premises

10] The applicant to serve an authenticated copy of this order upon the original petitioner at the earliest and file an affidavit of service in this regard.

11] Civil Application is disposed of in the aforesaid terms.

12] Parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)