

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 10105 OF 2014

Mr.Keshavji Dwarkadas Kapadia & anr. ... Petitioners

v/s

Mr.Jamnadas Purshottam Kapadia & ors. ... Respondents

***ALONG WITH
WRIT PETITION NO. 9948 OF 2014***

Mr.Jamnadas Purshottam Kapadia ... Petitioner

v/s

Mr.Keshavdas Dwarkadas Kapadia & ors. ... Respondents

Mr.Rajesh Patil for the petitioner in W.P. No.10105 of 2014 and for Resp. Nos.1 & 6 in W.P. No.9948 of 2014.

Mr.R.G. Jagtap i/by Jagtap & Jagtap for the petitioners in W.P. No.9948 of 2014 and for Resp. No.1 in W.P. No.10105 of 2014.

CORAM: N. M. JAMDAR, J.

DATED : 29TH APRIL, 2015

ORAL ORDER:

Heard learned counsel for the parties.

2 By these petitions, the petitioners challenge the order passed by the Appellate Bench of Small Causes Court dated 22 August

2014 fixing the compensation of the premises during pendency of the appeal. The suit premises in question admeasure carpet area of 12.08 sq.mtrs and built up area 14.496 sq.mtrs. The suit premises is a tenement situated at Kalbadevi, Mumbai. The respondents had filed Suit No.155/166 of 1995 for eviction. The suit was decreed. Thereafter the tenant filed Civil Appeal No.19 of 2013 before the Appellate Bench of Small Causes Court, Mumbai. In this appeal, the applicant took out an application for stay of decree dated 23 November 2013 for eviction. The Appellate Bench, after considering the decision of the Apex Court in the case of *Super Max International Pvt. Ltd. & ors. v/s M/s.R.M. Choksey & Co.*¹ and *Atmaram Properties (P) Ltd. v/s Federal Motors (P) Ltd.*², fixed the compensation at Rs.4,500/- per month. The tenant has challenged the fixation of compensation of Rs.4500/- by Writ Petition No.9948 of 2014, while the landlord has filed Writ Petition No.10105 of 2014 challenging the same order. According to the tenant, the compensation fixed is on the higher side, while it is the case of the landlord that it is excessively low.

3 Learned counsel for the landlord i.e. petitioner in W.P. No.10105 of 2014 has placed on record a copy of the ready reckoner. The ready reckoner for the area in which property is situated, shows the value per square meter at Rs.1,29,500/-. If the ready reckoner price of Rs.1,29,500/- per sq.mtr. is taken into consideration and it is applied to the built up area of 14.496, it will

1 (2009) Bombay Rent Act Cases 78.

2 (2005) Bom.C.R. 370.

work out to Rs.18,77,232 and considering the 10% net return, it would work out to Rs.1,87,723/- per annum i.e. it would come to Rs.15,644/- per month and if the commercial user is taken by adopting the ready reckoner rate of Rs.2,60,900/- for the same area, the market value would be Rs.37,82,006/- and 10% net return would work out to Rs.3,78,200/- per annum i.e. Rs.31,517/-.

4 It is the contention of the learned counsel for the tenant that, since the building is old and there are no facilities, the price fixed is on the high side. He states that the compensation of Rs.2,500/- is appropriate. This submission cannot be accepted. The property is situated in prime locality in city of Mumbai.

5 It is on record that the area in which the premises are located, premises are generally used for commercial purpose. The Valuer's report relied upon by the tenant, deducted 60%, because there is no water tap inside the room and no toilet. After carrying out all deductions under all possible heads, the Valuer stated the market value to be of Rs.2115/-. Considering the locality where it is situated, the valuation is opposed to common sense. There is absolutely no question of reduction of the compensation of Rs.4,500/-. If at all it is the case of enhancement, however, that is the subject matter of the writ petition filed by the landlord in Writ Petition No.10105 of 2014, which will have to be considered on its own merits.

6 In view of the above discussion, Writ Petition No.9948 of 2014 cannot be entertained and is rejected.

7 Place Writ Petition No.10105 of 2015 on board as per C.M.I.S. date i.e. 24 June 2015.

8 Parties are put to notice that on the next date Court will take a decision as to whether the petition be taken up for final disposal or not. Reply, if any, be filed before the next date.

(N. M. JAMDAR, J.)