

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10838 OF 2014

Ratilal Bhagwandas Sanghvi.] ... Petitioner

Versus

Kamleshsingh Harnamsingh Chowhan.] ... Respondent

Mrs. Vyas for Petitioner.

Mr. Vivek Kantawala a/w Mr. Amey Patil i/b Vivek Kantawala & Co.
for Respondent.

CORAM :- M. S. SONAK, J.

DATE :- AUGUST 12, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
3. This petition challenges order dated 23/04/2014 to the extent it requires the Petitioner to deposit compensation at the rate of Rs.7,000/- per month as a condition for stay upon the execution of the eviction decree.

4. Mrs. Vyas, learned Counsel for Petitioner, submits that the Appeal Court, in respect of the commercial premises on the ground floor of the same building wherein the suit premises are located, determined reasonable compensation in an amount of Rs.25,000/- per month, when the contractual rent was Rs.5,000/- per month. On this basis, Mrs. Vyas submits that reasonable compensation ought to be five times the contractual rent, more particularly since the landlord, has not chosen to impugn the decision of the Appeal Court in the case of commercial premises. Mrs. Vyas further submitted that the Petitioner is an aged person who presently resides along with his daughter-in-law consequent upon the demise of his son Rajesh. In these circumstances, Mrs. Vyas submits that the Petitioner or his daughter-in-law who reside in the suit premises, will not be able to deposit an amount of Rs.7,000/- and might have to suffer eviction even before the appeal is heard on merits.

5. Mr. Vivek Kantawala, learned Counsel for Respondent-landlord, submitted that the contentions of Mrs. Vyas are not borne by the material on record. Besides, Mr. Kantawala pointed out that this Court, by its order dated 25/04/2011, has taken note of the circumstance that the Petitioner has been adopting dilatory tactics to protract the proceeding. The order dated 25/04/2011 was carried further by the Petitioner to the Hon'ble Apex Court, however, by order dated 24/01/2013, leave was declined. In these circumstances, Mr.Kantawala submitted that there is absolutely no case made out to interfere with the impugned order.

6. The Appeal Court, it appears, has not taken into consideration the circumstance arising out of the demise of Rajesh and the consequent effect upon the financial capacity of the Petitioner and his daughter-in-law. Although it is true that no proper material has been placed on record by the Petitioner, there is no dispute with regard to the demise of Rajesh. 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 once decree of eviction is made, it will not be proper for the tenant to insist on payment of rent/compensation at the contractual rate, but it is necessary to determine the reasonable compensation, in the context of the market rate. At the same time, the Hon'ble Apex Court has also observed that the direction for deposit of reasonable compensation must not be excessively onerous so as to virtually render the right to appeal illusory. Accordingly, some weightage has to be given to the financial capacity of the Petitioner and his daughter-in-law. This Court, in the case of *Mrs. Kanakben Pravinbhai Sanghvi and Ors. Versus Kamlesh Singh Harnamsingh Chowhan*³, by way of an ad-interim order, has directed one of the tenants in the very building where the suit premises are located, to deposit Rs.5,000/- by way of reasonable compensation as a condition for stay upon the eviction decree.

1 (2005) 1 Supreme Court Cases 705

2 (2009) 9 Supreme Court Cases 772

3 Civil Writ Petition No.2089 of 2015, Order dated July 07, 2015

7. Taking all the aforesaid circumstances into consideration, it would be appropriate if the amount of compensation is reduced to Rs.5,000/- per month. There is no necessity to interfere with the rest part of the impugned order.

8. Accordingly, Rule is made absolute to the aforesaid extent. The amount of compensation, as determined by the order dated 23/04/2014, is reduced to Rs.5,000/- (Rupees Five Thousand Only) in place of Rs.7,000/- (Rupees Seven Thousand Only). The time for deposit of arrears is extended up to 30/09/2015. There shall be no order as to costs.

9. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)