

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11083 OF 2014

Akbarali Asgarali Shaikh	..	Petitioner
vs.		
Shankar Tukaram Rajiwale	..	Respondent

Mr. Kiran Joshi for Petitioner.
Mr. Arun J. Jadhav for Respondent.

CORAM : M. S. SONAK, J.
DATE : 27 AUGUST 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] In this petition the only challenge is to the determination of reasonable compensation at the rate of Rs.10,000/- per month as a condition for grant of interim relief. This Court, at the ad interim stage, before any notice could be issued to the respondent, had directed the petitioner to deposit compensation at the rate of Rs.2,500/- per month instead of Rs.10,000/- per month which was directed by the Appeal Court. This was on the basis of the contention that the petitioner is the only earning member of the family and his salary is Rs.7,000/- per month.

3] Today, when the learned counsel for the petitioner commenced his arguments by stating that the suit premises are 80

sq. ft. and in the impugned order, the Appeal Court has incorrectly referred to them as 104 sq. ft. In the affidavit in rejoinder filed by the petitioner before the Appeal Court, the petitioner has himself stated that the suit premises has area of 140 sq. ft. This statement was made in the context of claim of the respondent – landlord that the suit premises would fetch compensation of at least Rs.30,000/- per month. In the course of hearing, it transpires that the petitioner has three children, out of which, one is employed and it is stated that he draws salary of Rs.6,500/- per month. One daughter is stated to be unemployed and the other son is stated to be taking some training in Merchant Navy.

4] In this case, the petitioner claims residing in the suit premises since the last forty years. It is the case of the respondent that the petitioner is only a gratuitous licensee. This case has been accepted by the Trial Court *inter alia* on the basis that the petitioner had instituted a suit for declaration of tenancy and the same has been dismissed.

5] Considering that it is the case of the petitioner himself that the suit premises admeasure 140 sq. ft. and further, now that it has transpired that one of the sons of the petitioner is employed, which fact was neither disclosed to the Appeal Court nor to this Court

earlier, it will be only appropriate that the impugned order is not interfered with. However, although, the petitioner, deserves no indulgence in the matter, considering the circumstance that the petitioner might find it difficult to survive if compensation is determined at Rs.10,000/- per month, the same is reduced to Rs.7,500/- per month. The appeal is however directed to be disposed of expeditiously and in any case, within a period of six months from today.

6] Accordingly, the impugned order is modified to the extent that reasonable compensation amount is reduced from Rs.10,000/- per month to Rs.7,500/- per month and further, the Appeal Court is directed to dispose of the appeal as expeditiously as possible and in any case within a period of six months from today. The time limit for deposit of arrears is extended upto 30 September 2015.

7] All parties to act on basis of authenticated copy of this order.

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

Chandka

(M. S. SONAK, J.)