

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

WRIT PETITION NO. 10549 OF 2012

Smt. Roshan Palia

..Petitioner

Vs.

Jairaj Jayant Salgaonkar

..Respondent

....

Ms. Snehal Modi, Advocate for Petitioner.

Mr. Aloukik R. Pai a/w Mr. Atharva Dandekar, Advocates i/b A.L. Gore for Respondent.

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CORAM : N.M. JAMDAR, J.

DATED : 20 APRIL 2015

ORAL ORDER:

By this petition, the petitioner challenges the order passed by the Appeal Bench of the Small Causes Court granting stay to the the decree of eviction passed by the Small Causes Court, Mumbai on the condition that the petitioner deposits an amount of Rs.2 lakhs per month towards compensation.

2. The property in question is a residential flat admeasuring 3,946 sq.ft. situated on the second floor of a property known as Laxmi Sadan, Dadar, Mumbai. The respondent filed a Suit No. 819/1625/2003 against the petitioner in the Small Causes Court, Mumbai. The suit was filed on the ground of bonafide requirement.

It was stated that the respondents were in possession of the premises on the third floor. The family of the respondent required additional premises in view of their growing need. It was contended by the respondent that the petitioner has a residential flat in a building known as 'Trishul' at Bandra (W), Mumbai which can conveniently be used by the petitioner and therefore no hardship will be caused if the suit is decreed. The suit was tried by the learned Small Causes Court. The learned Small Causes Court by judgment and decree dated 22 December 2011, directed the petitioner to handover the possession of the premises. The petitioner thereafter filed an Appeal No. 9/2012 before the Appeal Bench of the Small Causes Court, Mumbai. In that appeal, the petitioner sought stay of the execution and operation of the impugned judgment and decree dated 22 December 2011. The learned Appeal Bench considered the application for stay and by the impugned order dated 15 September 2012 granted stay on the condition that the petitioner deposits an amount of Rs.2 Lakhs per month by way of compensation, from the date of decree and continues to deposit the compensation. This order is challenged in the present petition.

3. The premises are admeasuring 3,946 sq.ft. i.e. almost 4000 sq.ft. in a prime locality in Mumbai. The Appeal Bench considered the decision of the Apex Court in the case of ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.***¹ and ***State of***

1 . (2005) 1 SCC 705

Maharashtra & Anr. Vs. Super Max International Pvt. Ltd.² laying down the principles governing grant of compensation. It was placed on record before the Appeal Bench that as per the valuation report furnished by the respondent, the market rate was Rs.3,74,924/- and as per the valuation report produced by the petitioner the market rate was Rs.1,23,800/-. The Appeal Bench considered these two valuation reports, the nature of the premises, the locality, and came to the conclusion that the amount of Rs.2 Lakhs per month would be fair and reasonable compensation.

4. In the case of Atma Ram Properties (P) Ltd. (supra), the Apex Court has stressed underlying principle for determining of compensation as under:

“9.Robust common sense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record – all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in Olga Tellis v. Bombay Municipal Corpn.: (SCC P. 574, PARA 35)

“Common sense which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants.”

5. If one considers the area of the residential flat and the locality where it is situated and the valuation report, it cannot be

2 . 2009(5) Bom.C.R. 556

said that the amount of Rs.2 Lakhs per month for a flat of this nature would be a impossible compensation that no reasonable person will ever fix. Unless exercise of discretion is shocking or perverse, normally this Court in writ jurisdiction will not interfere with orders fixing compensation which is primarily an equitable interim order.

6. The main contention of the learned Counsel for the petitioner is that it not possible for the petitioner to pay such an amount. She submitted that the ability to pay would also be one of considerations. There is no doubt that an ability to pay is not an irrelevant. But the facts of the present case are to be seen. The case is presented is as if the petitioner is a poor widow with no means to pay and will be on streets if the impugned order is maintained. But it does not seem to be so. It is the case of the petitioner in her evidence itself, that her son with his wife are staying with her. She has admitted in the evidence that her son is a pilot in British Airways. Considering the financial ability of her son who is residing with her, the reason put forward by the petitioner cannot be accepted. In fact the said submission ought not to be made when in the evidence itself, the petitioner has admitted that her son, a pilot with sufficient means is staying with her.

7. The learned Counsel for the petitioner then submitted that if she is not able to pay and she is evicted, she will have no

other premises to stay. Apart from the findings of the Trial Court, it has come in the evidence of the petitioner hereof that there is a flat in Trishul Co-operative Society at Bandra (W). It was the contention of the petitioner that this flat belongs to her daughters. She has admitted in her evidence that her daughters are settled in United Kingdom and New Zealand. Therefore even this submission also cannot be accepted.

8. The learned Counsel then submitted that the petitioner has handed over 1,300 sq.ft. of the area and this fact has not been considered by the Appeal Bench while fixing the compensation. In the evidence, the petitioner had admitted that one Mrs. Dina Pathak was occupying part of the premises. It is the case of the respondent that the area which is handed over is the one in occupation of Mrs. Pathak and it was in ruinous condition and substantial amount was spend by the respondent for making it habitable. The learned Counsel for the respondent also submitted that though the petitioner had made a statement that the petitioner will hand over 1,700 sq.ft. area, however handed over only 1,300 sq.ft. that too which was not in habitual condition and for which respondent had to incur expenses. In view of this position, the argument of the learned Counsel for the petitioner cannot be accepted.

9. The quantum of compensation cannot be said to be unreasonable. The argument advanced was regarding ability to pay

and prejudice. In spite of having accommodation elsewhere and that the son of the petitioner is staying with her who has the financial capacity, the arguments are advanced that petitioner has no means to pay and will come on the street. The petitioner is not being candid with the Court. In my opinion, this is a frivolous petition and needs to be rejected with cost of Rs.5,000/-.

10. At this stage, the learned Counsel for the petitioner seeks continuation of the ad-interim order. Considering the facts and circumstances of the case, ad-interim order is extended by a period of five weeks from today.

(N.M. JAMDAR, J.)