

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

WRIT PETITION NO.11314 OF 2015

Ajit Narayan Ketkar

.. Petitioner

Versus

Prashant Shriniwas Bapat

.. Respondent

Mr. Vimlesh Singh, for the Petitioner.

Mr. Prashant S. Bapat - Respondent in person present.

CORAM : R.M. SAVANT, J.

DATE : 26th NOVEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 12.10.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order the application filed under Order 41 Rule 5 of the CPC for stay of the decree dated 03.01.2015 passed in RAE Suit No.398/618 of 2007 passed against the Petitioner came to be stayed inter-alia on the conditions mentioned in the impugned order. The condition with which the Petitioner aggrieved by is clause (2)(i) of the said order which reads thus :-

“(i) The appellant shall pay interim compensation @ Rs.5000/- (Rupees Five Thousand only) per month w.e.f. 03.01.2013 i.e. from the date of judgment and decree of eviction till decision in the appeal.”

The Appellant is therefore directed in terms of the said clause (2)(i) to pay interim compensation at the rate at Rs.5000/- per month with effect from 03.01.2013 i.e. from the date of judgment and decree till decision of the Appeal.

2. In so far as the grant of stay of the decree is concerned, the Lower Appellate Court had earlier by order dated 16.11.2013 granted stay to the decree. However, by the said order the amount fixed as and by way of interim compensation was Rs.500/- per month which the Petitioner/Appellant was directed to deposit in the Court pending the Appeal. The said order dated 16.11.2013 came to be challenged by the Respondent/landlord by filing Writ Petition No.7459 of 2014 in this Court. The said order dated 16.11.2013 fixing the interim compensation at Rs.500/- per month came to be set aside by a Learned Single Judge of this Court (N. M. Jamdar, J) and the matter was remitted back to the Appellate Bench of the Small Causes Court for a de-novo consideration as regards the interim compensation to be fixed by taking into consideration the material which was placed on behalf of the parties. It is on remand that the instant order dated 12.10.2015 has been passed by the Appellate Bench of the Small Causes Court fixing the interim compensation at Rs.5000/- per month.

3. Before the Appellate Bench Defendant/Appellant relied upon the report of the Valuer Lakdawala and Associates, whereas the Plaintiff relied upon the report of the Government Valuer one Shri. R. R. Pednekar (The report of Shri. R. R. Pednekar has not been annexed to the above Petition). In so far as the valuation report of the Lakdawala and Associates are concerned, they have adopted the capitalization method and on the said basis they have come to a conclusion that the expected rent per sq.ft. would be Rs.3.91 and on the said basis have calculated the expected rent. In so far as Shri. R. R. Pednekar is concerned, the same is based on the calculation of fair rent which calculation has been arrived at on the basis of value of the residential premises in question. In the said Valuation Report Shri. R. R. Pednekar also takes in consideration various factors i.e. area in which the premises are located, distance from Kurla Railway Station as also the distance from Bandra Kurla Complex which is major business district in so far as the Mumbai is concerned. The said report also takes into consideration the residential development which has taken place in the said area and on the said basis, the Valuer has come to a conclusion that the fair rent of the residential premises in question would be Rs.6000/- per month. The report of the said Government Valuer Shri. R. R. Pednekar has commended acceptance to the Lower Appellate Court as according to the Lower Appellate Court the said report has been

submitted after taking into consideration the area whether the suit premises are located, amenities, nature of construction, rateable value and thereafter on the basis of the ready reckoner rates the amount has been rounded up to Rs.6000/- per month per sq.ft. The Appellate Court having regard to the said report has deemed it appropriate to fix the interim compensation at Rs.5000/- per month which is lower than the amount mentioned in the report of the said Government Valuer. In view of the fact that the Appellate Bench has taken into consideration the relevant factors as disclosed in the report of Shri. R. R. Pednekar and has deemed it appropriate to fix the interim compensation at Rs.5000/- per month. The said amount cannot be said to be excessive or unreasonable having regard to the various factors which are germane to the fixation of interim compensation. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

4. However, the time to deposit the amount is extended by four weeks from date. The report of Shri. R. R. Pednekar is taken on record and marked as "X" for identification.

[R.M. SAVANT, J]