

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11647 OF 2014
WITH
CIVIL APPLICATION NO.966 OF 2015

Jagjivandas & Co.	]	
Through Partner Mr. Dilip J. Mahuvakar.	]	... Petitioner/ Orig. Defendant

Versus

1. Vijay J. Chauhan,	]	
2. Jayesh J. Chauhan.	]	... Respondents/ Orig. Plaintiffs

Mr. Jaydeep Deo for Petitioner.
Mr. V. Y. Sanglikar for Respondents.

CORAM :- M. S. SONAK, J.
DATE :- JULY 20, 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. The challenge in this petition is to the two orders, by which the Petitioner has been required to deposit compensation of Rs.25,000/- (Rupees Twenty Five Thousand Only) per month as a

condition for stay on execution of eviction decree and further, the Respondents-landlords have been permitted to withdraw the compensation so deposited.

4. The learned Counsel for Petitioner submits that there was no basis for fixing the compensation at Rs.25,000/- per month and in any case, in view of the observations made by the Hon'ble Apex Court in para 79 of the decision in the case of *State of Maharashtra and Another Vs. Supermax International Private Limited and Others*¹, no case was made out permitting the Respondents-landlords to withdraw the said amount.

5. Having heard the learned Counsel for parties and perused the record, there is no reason to interfere with the order determining compensation at the rate of Rs.25,000/- per month. The premises in the present case admeasure about 325 sq.ft. and are located at Princess Street, which is a prime commercial locality in Mumbai. The suit premises are being used by the Petitioner for the commercial purpose of sell of surgical instruments. Accordingly, it cannot be said that there is no basis for determining compensation at the rate of Rs.25,000/- per month.

6. Further, the Hon'ble Apex Court, in the case of *State of Maharashtra and Another Vs. Supermax International Private Limited and Others (supra)*, has held that ordinarily the amounts directed to

¹ (2009) 9 Supreme Court Cases 772

be deposited towards the reasonable compensation ought not to be permitted to be withdrawn by the landlord during the pendency of the appeal. However, in para 80 of the same decision, the Hon'ble Apex Court has held that in case for some reason the Court finds it just and expedient that the amount may be withdrawn by the landlord even when the matter is pending, the Court must be careful to direct payment to the landlord on terms so that in case the final decision goes in favour of the tenant, the payment should be made to him without any undue delay or complications.

7. In the present case, the cogent reasons have been assigned by the Appeal Court for permitting the landlord to withdraw the amount towards reasonable compensation. Accordingly, that part of the impugned order also does not warrant any interference. However, the Appeal Court has failed to put the landlord to terms, as has been by the Hon'ble Apex Court in para 80 of the decision in the case of *State of Maharashtra and Another Vs. Supermax International Private Limited and Others (supra)*. Accordingly, the Respondents-landlords are directed to furnish before this Court as well as the Appeal Court undertakings that in case the Petitioner's appeal before the Appeal Court is allowed, the Respondents-landlords shall, within four weeks from the date of decision of the Appeal Court, deposit in the Appeal Court, the entire amount which the Respondents-landlords may have withdrawn in pursuance of the orders made in the present petition. Such undertakings to be filed within a period of two weeks from today. Such undertakings are being accepted as undertakings to this

Court. Copies of such undertakings be furnished to the learned Counsel for Petitioner, appearing in this as well as before the Appeal Court.

8. In case such undertakings are not filed within two weeks from today, the leave granted to the Respondents-landlords to withdraw the amounts deposited by the Petitioner, shall stand revoked. The Petitioner, in such a situation, shall, however, continue to make deposit before the Appeal Court.

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

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

11. Civil Application does not survive and therefore the same stands disposed of.

(M. S. SONAK, J.)