

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

WRIT PETITION NO. 7459 OF 2014

Prashant Shrinivas Bapat

..Petitioner

Vs.

Ajit Narayan Ketkar

..Respondent

....

Mr. Sanjay Prabhu, Advocate for Petitioner.

Mr. S.R. Ronghe, Advocates for Respondent.

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CORAM : N.M. JAMDAR, J.

DATED : 19 MARCH 2015

ORAL ORDER:

Rule. Rule made returnable forthwith.

2. Respondent waives service.

3. By this petition, the petitioner-landlord challenges the order passed by the Appeal Bench of the Small Cause Court, Mumbai on an application filed by the respondent for grant of stay to the execution of the judgment and decree passed by the learned Small Cause Court ordering eviction of the respondent. The Appeal Bench has granted stay on the condition of payment of Rs.500 per month.

4. The respondent is occupying residential premises admeasuring 160 sq.ft. a one room kitchen situated at Kurla, Mumbai. By the judgment and decree dated 3 January 2013, the learned Small

Cause Court, Mumbai has ordered eviction of the respondent from the premises. In the appeal filed by the respondent, the petitioner took out an application for stay for the decree. The Appeal Bench after referring to the decisions in the case of *State of Maharashtra and Anr. Vs. Super Max International Pvt. Ltd. and Ors.* reported in *2009(2) R.C.R. 246* and *Atmaram Properties (P) Ltd. (M/s.) Vs. M/s Federal Motors Pvt. Ltd.* reported in *2005 SCFBRC 99* observed that the Court can impose just and equitable terms for grant of stay to a eviction decree. The Appeal Bench refers the various criterias which are required to be kept in the mind before passing an equitable order. However the Appeal Bench only quoted the provisions of law and the legal requirement, but has not applied the same to the facts of the case to come to the conclusion as to what was just and proper compensation to be directed. The impugned order shows that the Appeal Bench only takes into consideration the fact that the rent is of Rs.40 and the premises required major repairs and granted compensation of Rs.500/- per month. The Appeal Bench has not considered the ready-reckner of the locality and other amenities.

5. It is the case of the petitioner that the premises which are situated at Kurla, which is a decent locality in Mumbai and the compensation at the rate of Rs.500/- per month therefore is extremely low. Prima facie there appears to be merit in this submissions as the

compensation fixed at the rate of Rs.500/- per month appears to be on the lower side. The amount is fixed by the Appeal Bench without considering into various parameters which the Appeal Bench itself has adverted to as relevant. It was suggested to the learned counsel for the Respondent that the quantum can be fixed in this Court by consent, but the learned Counsel after taking instructions submitted that the respondent will rearrange the matter of compensation before the Appeal Bench. It is therefore necessary to direct the Appeal Bench to reconsider the issue as to the quantum of compensation.

6. Accordingly, the petition is disposed of by quashing and setting aside the impugned order dated 16 November 2013 so far as it directs to deposit the amount of Rs.500/- per month. The Appeal Bench will reconsider the issue of fixing the quantum of compensation after giving opportunity to both the sides. If the Appeal Bench is of the opinion that more particulars are required for fixing appropriate compensation, then it will be open to the Appeal Bench to call upon the parties to furnish such additional material. It is also made clear that when the Appeal Bench redetermines compensation, it will relate back to the date of the impugned order i.e. 16 November 2013. The respondent will be entitled to seek adjustment towards the amounts already deposited.

7. All contentions with regard to the quantum are left open. It is also made clear that till the matter is reconsidered by the Appeal Bench, then respondent will continue to pay Rs.500/- per month, lest the respondent construes this order to mean that he is not liable to be pay any amount, till the matter is reconsidered. It is open for the petitioner to make an application to the Appeal Bench of the Small Cause Court, Mumbai to take up his application for early disposal which will be considered by the Appeal Bench as per the time schedule available to it.
8. Rule made absolute in above terms. No costs.

[N.M. JAMDAR, J.]