

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

WRIT PETITION NO.88 OF 2016

Jagat Bir Aunil Das : Petitioner.
Versus
M/s. S.T.C. Movers Pvt. Ltd. : Respondents

Mr. Clive D'Souza for the Petitioner.
Mr. Shubro Dey i/f Mr. vivek Sharma for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 07th January 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 19/10/2015 passed by the Appellate Bench of Small Causes Court, Mumbai by which order the Application for stay (Exhibit 8) pending Appeal came to be allowed on the conditions mentioned in the said order. The said conditions for the sake of ready reference are reproduced herein under :-

“(a)(i) The appellant shall deposit the compensation at the rate of Rs.25,000/-p.m. for the flat No.101 i.e. residential premises and Rs.10,000/- p.m. for the garage i.e. commercial premises per month for the period from 16.10.2010 up to October 2015 amounting to Rs.21,00,000/- within 60 days from date of passing of this order;

(ii) The appellant shall go on deposit further monthly interim compensation at the rate of Rs.25,000/- p.m.

for the flat i.e. residential premises and Rs.10,000/- p.m. for the garage i.e. commercial premises per month on or before 15th day of each month till final disposal of this appeal.”

2 The Petitioner is principally aggrieved with the said conditions imposed by clause a(i) and a(ii) of the impugned order. The Petitioner is the original Defendant who has suffered a decree of eviction which has been passed in RAE Suit No.669/1106 of 2000. The said decree has been challenged by the Petitioner by filing an Appeal being No.1 of 2011 and it in the said Appeal that an Application for stay being Exhibit 8 came to be filed by the Petitioner.

3 The Respondent-landlord/decreed holder whilst opposing the stay application had prayed that the Petitioner be directed to pay mesne profits at the market rate applicable to the suit premises. This was on the basis of the judgment of the Apex Court in *Atmaram Properties*'s case. In support of its case the Respondent had filed the valuation report of one M/s. Talib & Associates, Architects. As per the said report of M/s. Talib and Associates, the suit flat would fetch Rs.97,330/- per month and suit garage would fetch Rs.67,658/- per month. The Petitioner i.e. the Appellant in the Appeal had also submitted valuation report of one Vartak & Associates. As per the said report of Vartak & Associates, the suit flat would fetch Rs.16,930.32 and the suit garage would fetch Rs.3,278.25.

4 The Appellate Bench of the Small Causes Court having regard to the fact that it is vested with the jurisdiction to impose reasonable conditions whilst granting stay of the decree passed by the Trial Court proceeded to consider the matter from the stand point of fixing the amount for the suit flat as well as the suit garage which would be payable by the Petitioner pending the Appeal. The Appellate Bench of the Small Causes Court referred to the fact that the suit premises are situated in the heart of the City of Mumbai. The Appellate Bench also observed that whilst fixing reasonable compensation, relevant considerations would be the area of the suit premises, amenities provided therein, the structure, the age of the suit building. It is by applying the said considerations that the Appellate Bench fixed an amount of Rs.25,000/- p.m. for the suit flat and Rs.10,000/- p.m. for the suit garage premises payable as mense profits pending the Appeal, and accordingly by imposing the said conditions, directed the Petitioner to pay the compensation at the said rate for the period from 16.10.2010 upto October 2015 amounting to Rs.21,00,000/- and thereafter directed the Petitioner to make further deposit from month to month granted stay of the decree passed by the Trial Court.

5 The learned counsel for the Petitioner would question fixation of the amount by the Appellate Bench of the Small Causes Court i.e. Rs.25,000/-

p.m. for the suit flat and Rs.10,000/- p.m. for the suit garage. The learned counsel for the Petitioner by relying upon the valuation report submitted by the Petitioner i.e. the valuation report of Vartak & Associates would contend that having regard to the said report, the amount fixed by the Appellate Bench of the Small Causes Court is on the higher side.

6 In my view, it is not possible to accept the aforesaid contention of the learned counsel for the Petitioner. The suit premises which is a flat and a garage are situated at Dadasaheb Phalke Road, Dadar (W), Mumbai which is in the heart of the City of Mumbai. The valuation report submitted on behalf of the Respondent-Decree Holder appears to be more closer to reality than the valuation report submitted on behalf of the Petitioner . A judicial notice can be taken of the fact that the Dadasaheb Phalke Road, Dadar (W) Mumbai has a high commercial value and therefore the amount fixed at Rs.25,000/- p.m. for the suit flat and Rs.10,000/- p.m. for the suit garage is more than reasonable. It is also required to be noted that the suit flat is being used for the commercial purposes and garage was also admittedly being used for commercial purposes wherein manufacturing of jeans was going on which now, according to the learned counsel for the Petitioner, has been stopped.

7 Be that as it may, having regard to the area of the suit premises and also having regard to the location wherein the suit premises are situated,

no fault can be found with the order passed by the Appellate Bench of the Small Causes Court. The above Writ Petition is accordingly dismissed. However, since the time to deposit the amount was extended till 06/01/2016, the same is further extended for a period of three weeks from date i.e. up to 28/01/2016. Hence the stay of the decree would continue to operate for a period of three weeks from date.

[R.M.SAVANT, J]