

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.2586 OF 2016

Mrs. Bhanumati Narrottamdas Sampat

(Deleted since deceased)

Ms. Neeta Naromttamdas Sampat and another .. Petitioners

Versus

Mr. Gordhandas Ramdas Morparia

(Since deceased)

Mr. Harshal Gordhandas Morphia and another .. Respondents

Mr. C. K. Tripathi, for the Petitioners.

Mrs. Sukeshi Bhandari, for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 26th FEBRUARY 2016

PC.

1. The order dated 01.12.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, allowing the applications Exh.7 and Exh.12 on the conditions mentioned in the operative part of the said order one of which is the payment of compensation at the rate of Rs.10,000/- per month is taken exception to by way of the above Petition.

2. The Petitioners have challenged the decree passed in RAE & R Suit No.251/420 of 2000 which is dated 31.07.2012. The Petitioners have challenged the said decree by way of above Appeal being No.108 of 2012

in which they filed an application for stay of the decree and application Exh.12 was filed by the Respondents/Decree Holders for payment of compensation terms of principles laid down by the Apex Court in Atmaram Properties (P) Ltd. Vs. Federal Motors (P) Ltd. reported in (2005) 1 SCC 705. As indicated above, the Appellate Bench of the Small Causes Court has allowed both the applications by the impugned order.

3. In so far as the stay of the decree is concerned, the stay has been granted on the terms and conditions mentioned in the operative part of the impugned order. In so far as the compensation claimed by the Respondents/Decree Holders is concerned, the same has been fixed at Rs.10,000/- per month for both the premises i.e. Room Nos.12 and 13. The principal ground on which the compensation fixed is challenged is that there was no material before the Appellate Bench of the Small Causes Court to arrive at the said Rs.10,000/- per month. It is required to be noted that the said two premises are situated in a building in Kalbadevi which can be said to be a commercial/business hub in the heart of the city of Mumbai. A judicial notice can be taken of the fact that though the properties in the said area are old they have high commercial value. Though the premises in question are for residential user, the fact that they are situated in an area which is having commercial value cannot be disputed. In my view, therefore, the amount fixed at Rs.10,000/- for two

rooms is more than reasonable though there is a dispute as regards the extent of the said rooms as according to the Learned Counsel for the Respondents/Decree Holders the premises totally admeasure 700 sq.ft.

4. Per contra, the Learned Counsel for the Petitioners states that as per the municipal records the said premises totally admeasure 400 sq.ft. Be that as it may, assuming that the said premises are admeasuring 400 to 500 sq.ft the amount of Rs.10,000/- is more than reasonable. The Writ Petition is accordingly dismissed.

5. Since the Petitioners have already deposited an amount of Rs. 2,00,000/- in this Court, the Petitioners are granted four weeks time to deposit the balance amount which is required to be deposited in terms of the order passed by the Appellate Bench of the Small Causes Court. It is after receipt of the balance amount that the entire amount to be transferred to the Small Causes Court by the Registry of this Court. Put up for compliance after four weeks.

[R.M. SAVANT, J]