IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2438 OF 2015
IN
WRIT PETITION NO.1682 OF 2012

Anuradha Shantanu Gandhi ..Applicant

In the matter of

Shakil Illabaksh Shaikh ..Petitioner
Vs.
Anuradha Shantanu Gandhi ..Respondent

Mr. S K. Jain for the Applicant / original Respondent

Mr. S. G. Deshmukh a/w Mr. M. R. Deshpande for the Respondent / original Petitioner

CORAM : R. M. SAVANT, J.
DATE : 5th JANUARY, 2016

P.C.

1 The above Civil Application has been filed for the following two reliefs :

(a) That monthly compensation amount may be revised and increased as per the date provided to a minimum of Rs.39,000/- per month or any other amount as the Hon'ble Court may deem fit and proper with yearly increase in compensation at the rate of 20% from January every year.

(b) The Petitioner be directed to deposit in Court the amount of monthly compensation on or before 5th of each month regularly and any 2 defaults committed in doing so the petition shall automatically stand dismissed with costs.

2 The above Writ Petition is directed against the decree of eviction passed against the Petitioner abovenamed which decree is in favour of the Applicant i.e. the original Respondent who is the landlord of the premises in question. The above Petition had come up for admission on 26-3-2012 on which day, a Learned Judge of this Court admitted the above Petition and granted Rule on interim relief which was made returnable on 16-7-2012. In so far as the interim relief is concerned, the matter thereafter came before the another Learned Single Judge of this Court on 22-11-2012 on which day the Learned Single Judge granted liberty to the Respondent to file additional affidavit in reply for fixing the market rate of compensation payable for the premises for the Petitioner to continue therein despite the decree of eviction against him. It appears that in terms of the liberty granted vide the said order dated 22-11-2012, the Respondent had filed an affidavit on 1-12-2012 stating the compensation payable for the occupation of the premises in question. The same was on the basis of the expected market rate. It appears that the original Petitioner Shakil Shaikh had filed his rejoinder on 15-1-2013 to the said affidavit filed on behalf of the Applicant and the matter was thereafter heard

for confirmation of interim reliefs by another Learned Single Judge of this court (R.C. Chavan, J.) as His Lordship then was. The Learned Single Judge by order dated 21-3-2013 fixed the amount of Rs.5000/- per month as compensation payable to the Respondent landlord i.e. the Applicant herein during the pendency of the above Petition. The said amount was to be deposited in this court subject to eventual adjustment as per the final order of the Court. The interim order which was in operation and which was granted by the order dated 26-3-2012 was confirmed on the said terms. Hence in so far as the aspect of interim compensation payable pending the Petition is concerned, the same was adjudicated by the Learned Single Judge of this Court by order dated 21-3-2013.

3 The instant Civil Application has been filed and as can be seen from prayer clause (a), the Applicant is claiming compensation at the rate of Rs.39,000/- per month in support of the said claim the Applicant seeks to rely upon the ready reckoner rates prevalent for the area. The above Civil Application is opposed to on behalf of the original Petitioner on the ground that since the issue of interim compensation has been finally adjudicated vide order dated 21-3-2013, the above application seeking higher amount is not maintainable. The said submission is sought to be countered by the Learned Counsel appearing for the Applicant Mr. Jain by contending that the order dated 21-3-2013 has not been passed on merits and the adhoc compensation

has been fixed and therefore the Applicant is entitled to maintain the instant Civil Application for seeking a higher compensation. The basis on which the higher compensation is sought to be claimed was also sought to be disputed on behalf of the original Petitioner, however, it is not necessary for this Court to go into the said aspect. As indicated above by order dated 22-11-2012 a Learned Single Judge of this Court had granted liberty to the Applicant to file an additional affidavit in reply to place the material on record as regards the expected market rate of compensation for the premises in question. The said affidavit in reply came to be filed which is dated 1-12-2012 thereafter a rejoinder came to be filed by the original Petitioner. It is on the basis of the said pleadings that the matter was considered in respect of the confirmation of the ad-interim reliefs. The Learned Single Judge R.C.Chavan J, has by the order dated 21-3-2013 has accordingly fixed the interim compensation at Rs,5000/- and has also fixed the manner in which the said compensation is to be deposited. The said order is therefore a final order in so far as the grant of interim reliefs is concerned which reliefs have been granted on the conditions mentioned in the order dated 21-3-2013.

3 By the instant Civil Application what the Applicant is seeking is a higher compensation, in my view, such an application would not be maintainable in the light of the adjudication which has taken place vide the said order dated 21-3-2013. If the Applicant was aggrieved by the fixation of

amount as done by the said order dated 21-3-2013, then it was open for the Applicant to take appropriate recourse but it is not open for the Applicant to file another application seeking a higher amount. Hence the relief sought by way of the above Civil Application cannot be granted. The Civil Application is accordingly rejected.

[R.M.SAVANT, J]