

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

CIVIL REVISION APPLICATION (STAMP) NO.4792 OF 2016

Lal Mohammed Sardar and others

.. Applicants

Versus

Fazila Mohammed Rafiq Dosani and another

.. Respondents

Mr. P. M. Shah, for the Applicants.

Mr. S. N. Vaishnawa, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 24th FEBRUARY 2016

PC.

1. The revisionary jurisdiction of this Court is invoked against the order dated 27.01.2017 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order, the application for stay of the decree being Exh.7 came to be allowed and the stay to the decree came to be granted on the terms and conditions mentioned in the operative part of the impugned order. The principal condition on which stay has been granted is that the Appellants i.e. Applicants herein are directed to deposit compensation at the rate of Rs.50,000/- per month for the period from 21.08.2014 up to January 2016.

2. The suit in question being LE Suit No.142/177 of 2008 came

to be decreed by the Trial Court i.e. Learned Judge of the Small Causes Court, Mumbai, by judgment and decree dated 21.08.2014 and pursuant to the said decree it was directed that the Applicants herein who are gratuitous licensees to quit and hand over possession of the premises in question. The suit premises is an open plot of land admeasuring 60 ft. X 45 ft. The original Plaintiffs i.e. the Respondents herein have their ice factory adjacent to the suit premises and it seems that the Applicants herein i.e. the Appellants were buying ice from the Plaintiffs/landlords and selling it in the open market at various places. The Applicants/Appellants were permitted to reside in the said suit premises which belong to the Respondents herein i.e. landlords gratuitously.

3. On the decree being passed, the Applicants/Appellants filed an Appeal No.407 of 2014 against the said decree and filed instant application Exh.7 for stay of the decree. The Respondents herein i.e. the original Plaintiffs opposed the stay application and it was the contention of the Respondents that the stay be granted on such conditions as the Lower Appellate Court deems it appropriate to impose. The Respondents in support of their case that the Applicants be directed to deposit compensation in terms of the judgment of the Apex Court in **Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.** reported in **(2005) 1 SCC 705** filed a report of the approved Valuer in respect of the expected rent

that the premises would fetch. The said Valuer has mentioned that the expected rent that the premises fetch would be Rs.1,17,984/- per month. The said report submitted by the approved Valuer was sought to be contested by the Applicants by contending that the said report does not take into consideration the fact that no facilities are made available to the Applicants/Appellants. The Lower Appellate Court considered the said application Exh.7 and having regard to the approved Valuer's report as also considering the fact that the suit premises were situated in the heart of Mumbai near Minerva Cinema on Lamington Road came to a conclusion that the compensation fixed at the rate of Rs.50,000/- per month would be fair and reasonable. The Lower Appellate Court has accordingly imposed said condition and granted stay to the decree.

4. The Learned Counsel appearing on behalf of the Applicants i.e. Respondents would contend that the suit premises are an open shed without any facilities and is only being used for the purposes of sleeping by the 27 Applicants who are the 27 Appellants. It was the submission of the Learned Counsel that the amount fixed at Rs.50,000/- per month as compensation was excessive and exorbitant.

5. Per contra, the Learned Counsel appearing on behalf of the Respondents i.e. original Plaintiffs Mr. S. N. Vaishnawa would submit that

the Applicants who are the gratuitous licensees are directed to be evicted consequent to the decree passed by the Trial Court. It was the submission of the Learned Counsel that the Applicants have not paid a single farthing since the last so many years and that the electricity bills and water bills are being paid by the Respondents landlords. It was the submission of the Learned Counsel that the said open plot admeasuring 60 ft. X 45 ft. with patra shed would fetch upwards of Rs.5,00,000/- if it was to be let out to any private party.

6. In my view, there is no merit in the above Civil Revision Application. It is required to be noted that the premises are situated in the heart of Mumbai near Minerva Cinema on Lamington Road. The Applicants herein are dealing with ice produced by the Plaintiffs/landlords factory and supplying and selling it in the open market. As indicated above, an approved Valuer's report has been submitted by the Respondents, wherein the expected rent the premises would fetch is Rs.1,17,984/-. The Appellate Bench of the Small Causes Court has taken into consideration the relevant factors and has thereafter fixed an amount of Rs.50,000/- per month. The Appellate Bench of the Small Causes Court has also taken into consideration the fact that there are 27 Applicants/Appellants who are making use of the said premises. It is well settled by the judgment of the Apex Court that the amount fixed pending a

challenge to the decree should not be fanciful and exorbitant. In the facts and circumstances of the case, it cannot be said that the amount fixed at the rate of Rs.50,000/- is fanciful or exorbitant. Hence, no case for interference in the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

7. However, the time to deposit the amount in terms of the impugned order is extended by a period of six weeks from date.

[R.M. SAVANT, J]