

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.197 OF 2016
IN
CIVIL REVISION APPLICATION NO.27 OF 2016

Mohammed Zubair A.B.Merchant .. Applicant

vs.

Mrs.Noorjahan Burhan Ahmed .. Respondent

Mr.Owen Menenzes i/b Mr.Sean Wassoodew for the applicant

Mr.Sameer R. Bhalekar for the respondent

CORAM : K. K. TATED, J.
DATE : APRIL 25, 2016

PC.:

1 Heard the learned counsel for the parties.

2 This application is preferred by plaintiff for fixing monthly compensation in respect of the suit premises i.e. shop no.3, ground floor, Razak Manzil, situated at 40, Lady Jamshedji Road bearing C.S.No.3/1177 of Mahim Division, G/N Ward, Mumbai 400 016 during the pendency of the present Civil Revision Application.

3 In the present proceeding, the plaintiff filed the Suit in the Small Causes Court for vacant and peaceful possession of the suit premises. The R.A.E. & R. Suit No.529/992 of 1999 was decreed by the Trial Court on 31.07.2009 directing tenant to hand over vacant and peaceful possession of the suit premises to the landlord. Being aggrieved by the said decree, the tenant preferred Appeal No.496 of 2009 before the appellate bench of Small Causes Court. The appeal stand dismissed by order dated 12.10.2015. Thereafter tenant preferred the present Civil Revision Application. The same was admitted by this court by order dated 2.2.2016 and granted interim relief in terms of prayer clause (b) on usual terms. Hence, the present Civil Application is preferred by landlord for fixing compensation till the hearing and final disposal of Civil Revision Application.

4 The learned counsel for the plaintiff submits that the suit premises is located in the residential area with close proximity to (ST).Michel Church and School, Mahim bus depot, Mahim Darga, Hinduja Hospital, Bombay Scottish school and Mahim railway station and with all infrastructure and transport easily available. He further submits that on the right hand opposite side of the suit premises famous restaurant MM Marosh is situated. He further submits that on the main road of Lady Jamshedji Road on the left hand side of the suit premises Jafferbhai Delhi Darbhar and 5 Spice is located. He further submits that the suit premises is admeasuring 300 sq.ft. He submits that the plaintiff obtained valuation report from the government recognised valuer dated 21.12.2015. He submits that the valuer after considering the prevailing market value and as per the ready reckoner

zone 17/116 of Mahim Division of 2009 and considering the Leave and Licence Agreement dated 5.8.2015 held that the suit premises will fetch market rate / mesne profit @ Rs.48,000/- per month. He further submits that the tenant permitted Vodafone company to put their sign board on the suit premises. He submits that Vodafone company is paying Rs.7500/- per month to the plaintiff. He submits that considering the location where the suit premises is situated and the tenant sub-letted some portion of the suit premises to Vodafone company for putting their sign board, the tenant may be directed to deposit the sum of Rs.48,000/- per month by way of interim compensation from the date of decree dated 31.7.2009 till the hearing and final disposal of the present Civil Revision Application. He submits that if Civil Application is not allowed, irreparable loss will be caused to the applicant landlord.

5 On the other hand, the learned counsel for the tenant vehemently opposed the present Civil Application. The tenant filed their Affidavit-in-Reply along with valuation report. The learned counsel for the tenant submits that the monthly rent in respect of the suit premises was Rs.252 per month excluding the taxes. He submits that the valuation report dated 4.4.2016 obtained by tenant from Nadkarni and Co. Architects, Valuers, Interior Designers shows that monthly compensation of the suit premises to the extent of Rs.9,000/- per month. He submits that the valuer has considered more than 4 leave and licence instances in the locality where the suit premises is situated. He further submits that the tenant is a Senior Citizen and he is doing the business in the suit premises.

6 The learned counsel for tenant submits that considering these facts and the valuation report dated 4.4.2016, the monthly compensation in respect of the suit premises should not be more than Rs.9,000/- per month. He submits that if this court allows the Civil Application and directs the tenant to deposit monthly compensation @ Rs.48,000/- per month, irreparable loss and injury will be caused to the tenant. He submits that it is impossible for the tenant to pay compensation @ Rs.48,000 per month. Hence, this Hon'ble Court be pleased to fix monthly compensation in respect of the suit premises during the pendency of the present Civil Revision Application at reasonable rate which is affordable to the tenant also.

7 I have heard both the sides at length. It is to be noted that there is a concurrent finding of fact recorded by both the courts below and directed the tenant to hand over vacant and peaceful possession of the suit premises to the landlord. The suit premises is situated in the locality where all facilities are available. Apart from that, the valuation report placed on record by the landlord dated 21.12.2015 shows monthly mesne profit / monthly rent of the suit premises @ Rs.48,000/- per month on the basis of ready reckoner and the leave and license agreement of the properties from the same locality. It is to be noted that the valuation report placed on record by the tenant dated 4.4.2016 shows that the valuer has considered leave and licence agreements for the year 2009 and that also in respect of the shops which are situated in other localities.

8 The Apex Court in the matter of *Atma Ram Properties (P) Ltd.*

vs. Federal Motors Pvt.Ltd., 2005 (1) SCC 705 and The State of Maharashtra and Anr. vs. Super Max International Pvt.Ltd. and Ors., 2009(9) SCC 772 held that at the time of fixing interim compensation same be fixed on the basis of rent paid by the tenant, ready reckoner and market value of the suit premises.

9 Considering the submissions made by the learned counsel for the landlord, valuation report dated 21.12.2015, the leave and license agreement dated 5.8.2015 and as the suit premises is situated in a building which is 50 years old, I am of the opinion that pending the hearing and final disposal of the Civil Revision Application, tenant to deposit compensation in respect of the suit premises @ Rs.30,000 per month from the judgment and decree passed by Trial Court on 31.7.2009 in addition to regular rent. Hence, following order is passed:

- a) Tenant is directed to deposit sum of Rs.30,000/- per month by way of interim compensation in respect of the suit premises from August 2009 till the hearing and final disposal of the Civil Revision Application.
- b) In addition to compensation, tenant to deposit regular rent in Trial Court till the hearing and final disposal of the Civil Revision Application.
- c) Tenant to clear the arrears of compensation and rent within 12 weeks from today, failing which interim protection shall stand vacated without referring back to

the court.

d) Tenant to deposit compensation as well as rent in Trial Court from 1.5.2016 on or before 10th of each month.

e) If amount is deposited within within stipulated time as stated hereinabove, Trial Court is directed to invest the amount of interim compensation in fixed deposit of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the Civil Revision Application.

f) Landlord is entitled to withdraw the amount towards the rent without furnishing any security.

g) Liberty granted to the tenant to file usual undertaking as per order dated 2.2.2016 on or before 4.5.2016 with copy to other side.

h) Civil application stands disposed off accordingly.

JUDGE