

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10190 OF 2016

Smt. Gangubai Chandrakant Shelke And Anr. ...Petitioners

Versus

Mr. Prabhakar Govind Mogal And Ors. ...Respondents

....

Mr. Jaydeep Deo, Advocate for the Petitioners.

Mr. Ravi G. Shinde, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 07th SEPTEMBER, 2016

P.C.

1. Heard Mr. Jaydeep Deo, learned Counsel for the petitioners and Mr. Ravi Shinde, learned Counsel for respondent No.1 at length. On the oral application made by Mr. Deo, respondents No.2 to 4 are allowed to be deleted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 30.1.2016 passed by the learned District Judge-19, Pune below Exhibit-11 in Civil Appeal No.118/2015. By that order, the learned District Judge allowed the application filed by the petitioners, hereinafter referred to as 'defendants No.1 and 4' and directed them to pay to the first respondent mesne profits / compensation

for the suit premises @ Rs.13678/- per month from January, 2015 to December, 2015, within one month from the date of the order. The petitioners are further directed to pay monthly mesne profit / compensation of Rs.13,678/- per month from January, 2016 onwards.

3. Mr. Deo has invited my attention to the extract of the Ready Recknor in respect of Laxmi Road and more particularly in respect of CTS No.856. He further submits that the suit premises is used for residential purposes in respect of which the rate is Rs.69,710/- per square meter. However, the learned District Judge while granting stay has applied commercial rate of Rs.4,09,030/- per square meter. He, therefore, submitted that the impugned order deserves to be modified. Mr. Shinde did not dispute that the suit premises is for residential use and is not used for commercial purposes though it is on the ground floor. He submitted that if the rate applicable for residential premises is applied, in that event the monthly compensation / mesne profit would be to the tune of Rs.2400/- approximately.

4. In view thereof, by consent of the parties, impugned order is modified in following terms :

- i. Application Exhibit-11 is allowed. Defendants No.1 and 4 shall pay the mesene profit/compensation for the suit premises at the rate of Rs.2400/- per month from January, 2015 to December, 2015 [i.e.

Rs.50,400/-] within four weeks from today.

- ii. Defendants No.1 and 4 shall go on paying compensation at the rate of Rs.2400/- from January, 2016 onwards to the first respondent.
- iii. While deciding the appeal, Appellate Court will pass appropriate order in relation to the payment made by the petitioners.
- iv. Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Deshmane (PS)