

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

WRIT PETITION (ST) NO.13185 OF 2015

Deepak S. Chavan .. Petitioner

vs.

Shantaben V. Shah .. Respondent

Ms.Nishita Mohanty i/b Mr.Jindagi Shah for the petitioner

Mr.Piyush M. Shah for the respondent no.2

CORAM : K. K. TATED, J.
DATE : APRIL 5, 2016

PC.:

1 This court by order dated 16.6.2015 issued notice to the respondent indicating that endeavour shall be made to dispose of this matter finally at the stage of admission itself. Hence, by consent of both the parties, this matter is taken up for final disposal at the stage of admission.

2 Heard the learned counsel for the parties.

3 This petition is filed under Article 227 of the Constitution of India in which the petitioner defendant is challenging the order dated 8.4.2015 passed by the Appellate Bench of Small Causes Court below

Exhibit-6 in Appeal No.240 of 2014 granting conditional order under Order XLI Rule 5 of the Code of Civil Procedure, 1908 directing defendant to deposit compensation in respect of the suit premises i.e. Room No.8 on the first floor of the building known as 152-156 situated at N.M.Joshi Marg, Lower Parel, Mumbai 400013 @ Rs.12000 per month from the date of decree i.e. w.e.f.29.4.2014 upto April 2015 and to continue to deposit compensation till the hearing and final disposal of the Appeal.

4 This court by order dated 16.6.2015 granted ad-interim relief permitting the defendant to deposit compensation @ 6,000/- per month instead of Rs.12,000/- per month as directed by the impugned order, in order to take benefit of stay on execution of the decree impugned before the Appellate Bench of Small Causes Court.

5 For the sake of convenience, the nomenclature of the parties as is stated in the suit will be referred to hereinafter as the petitioner org.defendant and respondents org. plaintiffs.

6 Plaintiff filed R.A.E.Suit No.844/1662 of 2003 in the Small Causes Court at Bombay for vacant and peaceful possession of the suit premises from defendant tenant. That suit was decreed by the Trial Court by judgment and decree dated 29.4.2014 directing defendant to hand over vacant and peaceful possession of the suit premises to the plaintiffs. Being aggrieved by the said decree the defendant preferred Appeal No.240 of 2014. In that appeal, the defendant preferred Application below Exhibit-6 for stay of the execution of the judgment

and decree dated 29.4.2014 passed by Trial Court in R.A.E.Suit No.844/1662 of 2013 directing defendant to hand over vacant and peaceful possession of the suit premises. In that application, plaintiff filed their reply and placed on record valuation report dated 21.7.2014 prepared by Vasant Thakur & Associates, Architects, Engineers, Surveyors and Valuers. The said valuation report shows rent as per market value of the suit premises per month as Rs.22,730/- i.e. @ 63 per sq.ft. Considering the pleadings and the valuation report appellate bench of Small Causes Court fixed interim compensation in respect of the suit premises @ Rs.12,000/- per month. Hence, the present Writ Petition.

7 The learned counsel for the defendant submits that at the time of passing impugned order dated 8.4.2015 appellate bench of Small Causes Court has not considered the facts stated by the defendant in their application below Exhibit-6. She submits that the suit premises is situated in a Chawl system. Landlord is not providing any other facility. She submits that even the said suit premises is not attached with toilet. She submits that the building is in a dilapidated condition. She submits that the defendant tenant used to pay Rs.112 by way of rent though the plaintiff used to claim rent @ Rs.230.

8 The learned counsel for the defendant submits that at the time of fixing interim compensation under Order XLI Rule 5 of the Code of Civil Procedure, 1908 court has to consider financial position of the tenant, condition of the premises, locality in which the suit premises is situated and whether any amenities are provided by the landlord. She

submits that in the present proceeding landlord is not providing any facility to the tenants. In support of this contention, the learned counsel for the defendant relies on the judgment of this court in the matter of *Chandrakant Dhanu and Harishchandra Dhanu vs. Sharmila Kapur Daughter of the Late Inder Kumar Kapur, Diviya Raakhee Kapur, Daughter of the Late Inder Kumar Kapur, Nikhil Niranjana Kapur, Son of the Late Inder Kumar Kapur and Farida F.S. Vakil, 2009 (1) BCR 698*. She relies on paragraph 21 which reads thus:

“21. What emerge from these are:

(a) The basic burden lies upon the landlord to prove and support his case of reasonable compensation/ mesne profits. He must put on record material documents/ along with the affidavit to support his case of enhanced compensation. The material if placed by the landlord / Licensor / Owner, the Court needs to consider the said material by giving full opportunity to the tenant / Licensee / Occupant / trespasser / obstructionists. Keeping in mind the effect of valuation or architect's report / opinion and its validity being expert's opinion, which can be subjected to challenge from other side, if case is made out. (*Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P. And Ors. MANU/SC/0745/1994 : [1994] 1 SCR 368*).

(b) The valuation report / opinion may be at least one of the government recognized valuer, apart from private valuer report, if any. Both the parties are free to submit their material on the record to support their case through their respective affidavits. (*The Special Land Acquisition Officer v. Sri Siddappa Omannu Tumari and Ors. MANU/SC/0160/1995 : AIR1995 SC 840*).

(c) The Court also needs to consider the principle of Order 20 Rule 12 of the C.P.C. while determining this ad-interim compensation/ mesne profits. The Court also needs to keep in mind as observed in Para 8 in Atma Ram (supra), "quantified by this Court in this order, is only a tentative opinion formed by the Court on the basis of material made available for the parties.

The Apex Court in Ramnik Vallabhdas Madhvani and Ors. v. Taraben Pravinlal Madhavani MANU/SC/0891/2003 : (2004) 1 SCC 497, in reference to mesne profit observed as under:

Mesne profit has been defined in Section 2(12) of the Code of Civil Procedure to mean as profits which the person in wrongful possession of property actually received or might with ordinary diligence would have received therefrom, together with interest on such profits.

The Apex Court in another judgment (Anderson Wright & Co. v. Amar Nath Roy and Ors.), referring to earlier Supreme Court's judgment (Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. MANU/SC/1047/2004: (2005) 1 SCC 705 observed as under:

As held by this Court in Atma Ram Property (P) Ltd. v. Federal Motors (P) Ltd., once a decree for eviction has been passed, in the event of execution such reasonable terms, as would in the opinion of the Appellate Court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of stay in the event of the appeal being dismissed.

(d) The Court, needs to consider and take note of (i) the Rent Control Legislation, governing the particular premises/ residential or non-residential. (ii) the Location/ area of the premises (iii) the age/ nature of

construction of the building/premises (iv) the facilities in the premises and outside the premises, advantages and disadvantages (v) the market value and the rental value of the premises based on architecture / expert / valuation reports / opinion (vi) other instances of the rent / license fees of similarly situated premises (vii) the date of termination of the tenancy / license.

(e) The Court also needs to consider that the compensation was awarded as condition precedent should not be oppressive and unreasonable which in a given case, if tenant failed to pay, has no option but to suffer the execution of a decree, as observed by the Apex Court. *Niyas Ahmed (supra)*. The user and the use of the premises are also material.

(f) The market value changes with time. The stamp duty is also changes accordingly. The rent/ license fee/ compensation so fixed at the interim period, based upon the market value may in a given case needs to be changed or re-fixed if case is made out. It may go up or go down if market value changes drastically.

(g) One cannot overlook that at the time of basic agreement, both the parties mutually agreed to the particular rent/ Leave license fee irrespective of valuation of the property. Now, when the Court fixes the compensation/ license fee, after termination of the tenancy, there is no question of any agreed rent or compensation. The Court decides the same based upon the material available/ placed on the record read with other various factors as referred in the Judgment. (h) One important aspect is that the Court, after giving opportunities to both the parties, needs to decide the interim and urgent issue of grant of provisional fair and reasonable compensation/occupation charges, based upon authenticated material produced on the record, pending the Appeal, summarily. There is no question of detail trial, but it is an essential condition precedent to

grant stay of the eviction decree/order on the footing of Order 41, Rule 5 of Civil Procedure Code. The final decision of the appeal should be uninfluenced by such tentative figure / order. Such provisional payment should be condition precedent but it is always adjustable. The amount so fixed in such proceedings is tentative figure. Such interim order/ payment is always subject to the final result of the appeal.

(i) The cases governing the leave and licence agreement as contemplated under the Mah. Rent Act need to be decided on the basis of the provisions of the Mah. Rent Act, as it provides and empowers the Competent Authority to pass an appropriate order that licensee, after expiry of leave and licence agreement, to pay double the agreed compensation/licence fee, pending the application for eviction. But there is no provision of such double licence fee pending the Appeal under the Mah. Rent Act. Therefore, in such cases in absence of any provision, the Appellate Court may pass appropriate order, considering various factors as referred above.

(j) The cases of trespasser, unauthorised occupant, obstructionist need to be dealt with again on different footing than that of a regular tenant/protected tenant/licensee as they are not governed by the Rent Control Legislation. Such unauthorised or illegal occupants, based upon the material produced on record, after giving opportunity to them may be directed to pay such occupation charges/compensation, pending the Appeal, at the current market rate/ rent which may be determined by the Court, taking note of interest of both the parties.”

9 The learned counsel for the defendant also relies on the judgement of our Hon'ble Court in the matter of *Marjorie Passanah and Anr. vs. Mumtaz Iqbal Shaikh 2008 (6) BCR 72*. She submits

that in both the cases our Hon'ble Court has held that at the time of fixing interim compensation in respect of the suit premises, the court should consider the location and the facility, if any provided by the landlord. She submits that in the present proceeding the appellate bench of Small Causes Court at the time of fixing interim compensation in respect of the suit premises @ Rs.12,000/- per month has not considered the same. Appellate court mainly relied on the Valuation Report dated 21.7.2014 placed on record by the plaintiff. Hence, order passed by the appellate bench dated 8.4.2015 below Exhibit-6 in Appeal No.240 of 2014 be set aside and reasonable compensation be decided to be deposit in the Trial Court during the pendency of the Appeal No.240 of 2014. She further submits that if Writ Petition is not allowed, irreparable loss and injury will be caused to the defendant.

10 On the other hand, the learned counsel for the plaintiff vehemently opposed the present Writ Petition. He submits that appellate court by order dated 8.4.2015 considered the Valuation Report dated 21.7.2014 and decided the compensation @ Rs.12,000/- per month which is on lower side. He submits that as per the valuation report the compensation in respect of the suit premises per month comes to Rs.22,730/-. He submits that suit premises is situated in a building which is located at the junction of N.M.Joshi Marg, Lower Parel, Mumbai 400013. He submits that suit premises is easily accessible by road, taxi, bus, train and is located nearby Lower Parel Railway Station and Curry Road Railway Station. He submits that valuer in his valuation report dated 21.7.2014 considered the ready reckoner for the year 2015. He submits that the valuer has fixed

compensation per month in respect of suit premises @ Rs.22,730/- only on the basis of ready reckoner. Hence, there is no substance in the present Writ Petition and same may be dismissed with costs. He submits that even the authorities relied by the defendant in the matters of *Chandrakant Dhanu and Harishchandra Dhanu vs. Sharmila Kapur Daughter of the Late Inder Kumar Kapur, Diviya Raakhee Kapur, Daughter of the Late Inder Kumar Kapur, Nikhil Niranjana Kapur, Son of the Late Inder Kumar Kapur and Farida F.S. Vakil, 2009 (1) BCR 698* (Supra) and *Marjorie Passanah and Anr. vs. Mumtaz Iqbal Shaikh 2008 (6) BCR 72* (Supra) held that at the time of fixing compensation court has to consider the expert opinion along with the area in which the suit premises is situated. He submits that in the case in hand suit premises is situated in market area of Lower Parel. Hence, compensation fixed by the appellate bench of Small Causes Court @ Rs.12,000/- is absolutely reasonable and hence, there is no substance in the present Writ Petition and same be dismissed with costs.

11 I have heard both the sides. I have gone through the copy of judgment and decree passed by Trial Court dated 29.4.2014 in R.A.E.Suit No.844/1662 of 2003, copy of application filed by defendant below Exhibit-6, valuation report placed on record by the plaintiff, the impugned order dated 8.4.2015 and the Apex Court judgments in the matters 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*. In the present proceeding, the suit premises is situated in the market area of

Lower Parel. Even the valuation report placed on record by the plaintiff dated 21.7.2014 shows monthly rent to the extent of Rs.22,730/-. Though the defendant at the time of argument made a statement that suit premises is situated in a building which is in dilapidated condition, defendant has not placed on record any documentary evidence to show the same. Hence, that cannot be considered in deciding the present Writ Petition.

12 The learned counsel for the defendant relied on two authorities in the matter of *Chandrakant Dhanu and Harishchandra Dhanu vs. Sharmila Kapur Daughter of the Late Inder Kumar Kapur, Diviya Raakhee Kapur, Daughter of the Late Inder Kumar Kapur, Nikhil Niranjana Kapur, Son of the Late Inder Kumar Kapur and Farida F.S. Vakil, 2009 (1) BCR 698* (Supra) and *Marjorie Passanah and Anr. vs. Mumtaz Iqbal Shaikh 2008 (6) BCR 72* (Supra). It is to be noted that in both the authorities our Hon'ble Court has held that at the time of deciding compensation the court has to consider the valuation report, area in which the suit premises is situated etc. In the case in hand these facts are considered by the appellate court at the time of fixing the compensation. Considering the valuation report dated 21.7.2014 placed on record by the plaintiff and the law declared by the Apex Court in the matters 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*, I am of the opinion that instead of fixing monthly compensation @ Rs.12,000/- it should be Rs.8,000/- per month till the hearing and final disposal of the appeal pending before the appellate

bench of Small Causes Court at Bombay. Hence, following order is passed:

- a) Writ Petition is partly allowed.
- b) Impugned order dated 8.4.2014 passed by appellate bench of Small Causes below Exhibit-6 in Appeal No.240 of 2014 in R.A.E. Suit No.844/1662 of 2003 is modified to the extent that instead of Rs.12,000/- tenant have to deposit compensation @ Rs.8,000/- per month.
- c) Rest of the terms and conditions of the impugned order remains as it is.
- d) Tenant to deposit arrears in Trial Court within 8 weeks from today, failing which interim protection granted shall stand vacated without referring back to the court.

JUDGE