

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST) NO. 13514/2016
IN
WRIT PETITION NO.10679/2015

Smt. Nirat Krishnadev Gupta & Ors.

... Petitioners

V/s.

Mrs. Vidyaben Mafatlal Parikh & Ors.

... Respondents

Mr. Gaurav Joshi, Senior Advocate with Mr. Piyush Raheja i/b. Smit
Kothari for the petitioners
Mr. Jaydeep Thakkar for the Respondents.

CORAM: K.K. TATED, J.
DATED : MAY 6, 2016

P.C. :

1. Heard the learned counsel for the parties. By consent of the parties, the matter is taken up for final hearing at the stage of admission itself.
2. By this review petition, the petitioner defendant is seeking review of the order passed by this court on 14.03.2016 directing the defendant to deposit compensation in respect of the suit premises @ Rs.1,50,000/- pm from September 2005 i.e. decree passed by the trial court till hearing and final disposal of the appeal No.248/2005.

3. This court directed the defendant to clear the outstanding by installment as stated in the operative part of para 18 (c) of the impugned order.

4. Being aggrieved by the said order, the defendant preferred SLP before the Apex Court. The defendant withdrew the SLP with liberty to file review petition on the point that this court has not considered the valuation report filed by them at the time of passing the impugned order. The Apex Court passed the following order:

“UPON hearing the counsel the Court made the following

ORDER

Learned Senior counsel appearing for the petitioner seeks permission to withdraw the Special Leave Petition.

The Special Leave Petition is dismissed as withdrawn.

Leave is granted to the petitioners to lay before the High Court the facts bearing on the valuation report submitted by the petitioners which according to them have not been taken into consideration by the High Court while passing the impugned order in question.”

5. Pursuant to the said liberty, the petitioner made the review petition.

6. The learned senior counsel for the defendant submits that in the present proceedings the suit premises is at Khar, Mumbai whereas at the time of passing the impugned order dated 14.03.2016, this court has considered the valuation in respect of the premises situated at Bandra, Mumbai which was recorded in the valuation report dated

12.02.2008 placed on record by the plaintiff. He further submits that, this court has not considered the valuation report dated 24.08.2008 of H.M. Panchal & Associates placed on record by the defendant at the time of fixing the monthly compensation of the suit premises. He further submits that the Valuer, in his valuation report dated 24.08.2008 specifically recorded that the suit premises is an old bungalow with ground and one upper floor with terrace. The construction of the said bungalow is of the year 1940. He further submits that the Valuer in Part-II of the Valuation Report specifically recorded that *“we have also observed that ground floor premises occupied by our client are in very bad condition and requires very heavy structural repairs from inside and outside for the safety of the Bungalow structure. It was also seen that there is roof leakage and seepage in both the bedrooms and bathroom from the upper floor in occupation of the owners.”* He submits that the Valuer, at the time of calculating the valuation of the suit premises, considered the sale deed dated 03.06.2005 in respect of the ground floor premises in Shankar Niwas, 91-A Road, Khar, Mumbai – 400051, sale deed dated 04.06.2005 in respect of Makaba House, 15th Pali Road Building, Bandra (W), Mumbai – 400 050 and also sale deed dated 11.06.2005 in respect of the premises at CTS No.473-E, Khar (W), Mumbai – 400 052. He submits that the Valuer, considering the sale instances from Khar and Bandra area and also the present condition of the suit premises concluded that the monthly compensation in respect of the suit premises should be Rs.10,730/- pm.

7. The learned senior counsel for the defendant further submits that

there was delay on the part of the plaintiff to make an application for interim compensation in respect of the suit premises. He submits that in the present proceedings the respondent plaintiff instituted RAE No.1419/4662/1983 before the Court of Small Causes which was decreed by the trial court by judgment and decree dated 09.09.2005. Thereafter the defendant preferred appeal No.248/2005 in which they made application for stay which was granted by the Appellate Bench of the Small Causes Court on 18.01.2006. In that appeal, the plaintiff respondent made application dated 20.02.2008 seeking compensation from the date of decree dated 09.09.2005. The application made by the plaintiff for interim compensation was rejected by the order dated 17.03.2009. He submits that after more than 5 years, the plaintiff filed Writ Petition No.10679/2015 before this court. He submits that there was inordinate delay/laches on the part of the plaintiff to file Writ Petition before this court. He submits that the delay/laches has not been considered by this court, at the time of passing the impugned order dated 14.03.2016. He submits that since there was delay/laches on the part of the petitioner in filing the Writ Petition No.10679/2015, the petitioner was not entitled to interim compensation from the date of decree passed by the trial court. He submits that in the matter of ***Super Max International Pvt. Ltd. and Others Vs. R. M. Choksey & Co. and Ors. decided on 03/03/2009 in civil application No.37/2009 in Writ Petition No.8702/2005***, this court held that at the time of deciding interim compensation, before passing an order, the court should consider the delay/laches on the part of the plaintiff. He submits that in that case, because of delay and laches on the part of the plaintiff, the court has awarded interim compensation from the date of

application and not from the date of decree. Hence, the order passed by this court granting interim compensation from the date of decree passed by the trial court is contrary to law declared in the matter of Super Max International (Supra). On the basis of this submission, the learned senior counsel for the applicant/defendant submits that, this Hon'ble Court be pleased to recall/review the order dated 14.03.2016 fixing compensation of the suit premises. He submits that the compensation of the suit premises be pleased to fix on the basis of Valuation Report dated 24.08.2008 filed by the defendant from the date of filing of writ petition at the most.

8. On the other hand, the learned counsel for the plaintiff vehemently opposed the review petition. He submits that the defendant has not made out any case for review. He submits that this court, at the time of passing the order dated 14.03.2016, considered the Valuation Report filed by the plaintiff as well as the defendant. He submits that this court, in para 13 of the said order, considered the Valuation Report dated 17.05.2008 of H.M. Panchal & Associates which was placed on record by the defendant. He submits that though the defendant placed on record two valuation report dated 17.05.2008 and 24.08.2008 at the time of arguments, defendant relied on only one valuation report dated 17.05.2008. He submits that apart from that the suit premises is situated in a posh locality i.e. Khar. He submits that as per the Valuation Report filed by them, the monthly compensation of the suit premises comes to more than Rs. 2 lacs pm. but this Hon'ble Court directed the defendant to pay only Rs.1.50 lacs pm. He submits that in any case, the compensation amount is required to be deposited

in the court. There is no question of allowing the plaintiff to withdraw the said amount. This court also directed the trial court to invest the same in a fixed deposit account of any nationalized bank. Therefore, there is no question of entertaining the review petition.

9. Heard both sides at length. I have gone through the grounds raised by the petitioner in petition. It is to be noted that, at the time of passing the impugned order dated 14.03.2016 this court has considered the valuation report dated 17.05.2008 filed by the defendant on record and only the same was pointed out by the counsel for the defendant. In review petition, the petitioner defendant made a grievance that this court has not considered the valuation report dated 24.08.2008 of H. M. Panchal & Associates, Government approved valuer. The valuer, in his valuation report dated 20.08.2008 in Part-II stated that the bungalow in which the suit premises is situated is in a very bad condition and requires heavy structural repairs from inside and outside for the safety of the bungalow structure. It is to be noted that on the other hand, in the valuation report submitted by the respondent plaintiff dated 12.02.2008, the valuer has specifically stated under caption "location and situation" that the bungalow in which the suit premises is situated is in a good condition. He further submitted that all civil amenities are available within the approachable distance. On the basis of sale deed dated 21.09.2007 and agreement for sale dated 10.07.2007 the valuer valued mesne profit per month in respect of the suit premises @ Rs.110/- per sq.ft. after giving deduction to the extent of 20% being a bungalow is old structure. Finally, the valuer valued mesne profit @ Rs.2,35,950/- pm for 2145 sq.ft. area.

10. On the other hand, the valuation report dated 17.05.2008 placed on record by the defendant shows the monthly mesne profit at Rs.3644/-. Bare reading of the valuation report shows that the same is created to show the lesser mesne profit per month. In Mumbai that also in Khar area which is a posh locality to acquire the premises of 1500 sq.ft. for Rs.3644/- is impossible. The court can take notice that it is impossible to get an area of 1500 sq.ft. in any part of Mumbai including slum for Rs.3644/- pm. Hence, the valuation report dated 17.05.2008 placed on record by the defendant cannot be considered for calculating monthly compensation in respect of the suit premises.

11. The defendant also placed on record valuation report dated 24.08.2008 prepared by the same Architect. He has repeated the same things in his report that the bungalow is not in good condition. Same requires heavy repairs etc. By this report, the valuer valued mesne profits of the suit premises @ Rs.10730/- pm. on the basis of some sale instances those are dated 03.06.2005, 04.06.2005 and 11.06.2005. On the basis of these sale instances and after giving 40% deductions for depreciated value and structural heavy repairs to the suit premises, the valuer shown the mesne profits which comes less than Rs.7.50 pm per sq.ft. It is very difficult to accept that in Mumbai that too in Khar area to get a residential flat @ Rs.7.50 per sq.ft. per month. Bare reading of this valuation report and conclusion given by the valuer, clearly shows that the same is prepared just to under-value the suit premises. Hence, the valuation report placed on record by the petitioner defendant dated 17.05.2008 and 24.08.2008 cannot be considered for fixing monthly

compensation in respect of the suit premises.

12. Other point raised by the petitioner defendant is about the delay and laches. It is to be noted that, considering the principles laid down by the Apex Court in the matter of *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt.Ltd., 2005 (1) SCC 705* the landlord would be entitled for arrears of monthly compensation with retrospective effect is a matter within the discretion of the court. In the present proceedings, the tenant is using the property of more than 1500 sq.ft. area in a posh locality of Khar. I am of the opinion that in the interest of justice, the tenant should pay interim compensation from the date of passing the decree by the trial court. Hence, I do not find any substance in the objection raised by the defendant for awarding compensation from the date of decree.

13. Considering the above mentioned facts and the submissions, I am of the view that the petitioner defendant has not made out any case to review the order dated 14.03.2016.

14. Hence, the review petition stands dismissed.

15. Considering the facts and circumstances of the present case and as the petitioner defendant has to deposit Rs.1,50,000/- pm before the appellate court, in the interest of justice, the Appellate Bench of the Small Causes Court to decide the appeal No.248/2015 as early as possible in any case on or before 30.07.2016.

(K.K. TATED, J.)