

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 673 OF 2015
IN
CIVIL REVISION APPLICATION NO. 11 OF 2015

Shri Rajaram Vithoba Yadav .. Applicant
VS.
Vishu Ganpati Powar .. Respondent

None for Applicant.
Mr. Rahul Parab for Respondent.

CORAM : M. S. SONAK, J.
DATE: 10 OCTOBER 2016

P.C :

1] This matter was called out in its turn, a mention was made by Mr. S. S. Koregave is not available but would be available after 10-15 minutes. Accordingly, the matter was posted for 12 noon. When this matter is called out at 12.18 p.m., neither the applicant nor his Advocate Mr. Koregave are present.

2] Learned counsel for the respondent submits that the amount of compensation that has been determined in the ad interim order dated 8 October 2015 is fair and proper. He submits that the request on the part of the applicant to modify the sum from Rs.20,000/- per month to Rs.50/- per month is *ex facie* unreasonable.

3] Despite the absence of the applicant or Mr. Koregave, the application seeking modification or opposing confirmation of ad interim relief is perused. In the application, the applicant states that

he is ready to deposit the monthly rent of Rs.50/- per month and on account of financial difficulties, he is unable to pay compensation at Rs.20,000/- per month. In paragraph 6 of the application however, the applicant has admitted that he gets net profit of Rs.40,000/- per year.

4] If the balance-sheets submitted by the applicant in support of the application are perused, then, it is clear that they relate between the period 2002 and 2004. Obviously, on basis of such balance-sheets / profit and loss accounts, it cannot be deduced that the applicant earns profit of only Rs.40,000/- per year. The circumstance that the applicant is not bothered to even annexe his latest balance-sheet or profit and loss account, is sufficient to draw an adverse inference against the applicant.

5] The determination of compensation at the rate of Rs.20,000/- per month is on the basis of the decision of the Hon'ble Apex Court in the case of ***Atma Ram Properties Ltd. vs. M/s. Federal Motors P Pvt. Ltd.***¹ and ***State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd.***²

6] Considering that neither the applicant nor his Advocate are present despite opportunities, and further, the applicant has suppressed filing the latest profit and loss account / balance-sheets, it is not possible to modify the amount of compensation.

1 2005 (1) SCC 705

2 2009 (5) All MR 1001

Accordingly, this civil application is dismissed. Ad interim order made on 8 October 2015 is hereby confirmed.

7] After this order was dictated in the open court, Mr. Koregave appeared, at the end of the session and mentioned the matter. He was accordingly heard in support of the civil application. He submits that he has the latest profit and loss accounts / balance-sheets with him. However, he was unable to explain as to why such latest profit and loss accounts / balance-sheets were not appended to the civil application which was filed in the year 2015. He submits that some liberty be granted to the applicant to apply for variation, on the basis of the latest profit and loss accounts / balance-sheets. There is no question of grant of any liberty as such. If, in law, there is any change in circumstances, the applicant may be entitled to apply for variation. However, on the ground that application for variation is pending consideration, there will be no justification for not complying with the ad interim order dated 8 October 2015, which is now confirmed. On the basis of the material on record, there is no reason not to confirm the ad interim order dated 8 October 2015.

8] The civil application is disposed of accordingly.

(M. S. SONAK, J.)