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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

*CIVIL APPLICATION NO. 586 OF 2014
in
CIVIL REVN. APPLICATION NO. 203 OF 2007*

Martin & Harris Private Limited. ... Applicant.
V/s.
Exide Industries Limited
Formerly known as Chloride India Ltd. ... Respondent.

*with
CIVIL APPLICATION NO. 176 OF 2015*

Exide Industries Limited. ... Applicant.
V/s.
Martin & Harris Private Limited. ... Respondent.

Mr. P.K. Dhakephalkar, Senior Advocate a/w. H.N. Thakore, I.N. Rizvi i/b. Thakore Jariwala & Assoc. for the Applicant in CAO 176/15 and for Orig. Applicant in CRA 203/07.
Mr. Vineet Naik, Senior Advocate i/b. Mayuresh Borkar for the Applicant in CAC 586/215 and for Orig. Respondent.

***CORAM : N.M. Jamdar, J.
01 December, 2016.***

Oral Order :-

Heard the learned Counsel for the parties. This Civil Application is taken out by the Original Respondent - landlord in the Revision Application for fixing the suitable compensation at the rate of Rs. 4,81,162/- per month pending the hearing and final

disposal of the Civil Revision Application. Civil Revision Application No. 203 of 2007 was admitted on 29 January 2008 and interim relief was granted. Liberty was given to the Respondent i.e. the Applicant herein to take out appropriate proceeding from mesne profit. A Civil Application bearing No. 63 of 2008 was taken out by order dated 17 December 2011. The Civil Application was withdrawn with liberty to file another application and thereafter, the present Civil Application is filed on 2 May 2014.

2. The premises are admeasuring 3774.45 sq.ft. which according to the Applicant includes 40% of the adjoining and appurtenant terrace. The suit was instituted on the ground of erection of permanent structure causing damage to the premises and for sub-letting. To the application a valuation report has been annexed and as per the report of the valuer, an amount of Rs.4,80,000/- has been sought. As per the valuation report it is seen that the premises are located in the prime commercial area in Mumbai City. The valuer has taken into consideration various aspects of the matter including the market rate which according to the valuer will justify a claim of Rs.4,81,162/- per month. The Respondents on the other hand have filed an affidavit in reply in which the Respondents have also placed on record their valuer's report wherein according to the valuer the valuation is not Rs.4,81,162/- as sought for and according to the learned Counsel for

the Respondent, it would be in the range of Rs. 1,00,000/- to Rs. 1,40,000/- lakhs per month.

3. I have gone through the valuation report submitted by both the parties. The valuation report submitted by the Applicant has stressed more on the location of the premises and to justify basis of claiming the compensation at the rate of Rs.4,81,162/- . However, on the other hand, the valuation report submitted by the Respondent has emphasized on the condition of the building pointing out that it is built in the year 1940. Therefore, the situation is that the premises are located in the commercial area of Mumbai, however they are not located in a new building but a building of the year 1940. Therefore, both the valuation reports which have taken extreme position cannot be accepted and a midway needs to be arrived at. The learned Counsel for the parties thereafter have left it to this Court to decide a midway figure.

4. After hearing the learned Counsel for the parties and their respective stand that the compensation would be either Rs.4,81,000/- or Rs.1,50,000/-, I am of the opinion that the compensation at the rate of Rs.2,50,000/- would be fair and proper.

5. The learned Counsel for the parties thereafter made their submissions as the date from which the arrears need to be paid. It is

true that the Civil Revision Application was admitted in the year 2007 and while withdrawing the Civil Application on 17 December, 2011, liberty was given to the Applicant to file a fresh Application. It will have to be kept in mind that the fresh application was not immediately filed but filed in May 2014. There was no real reason to file a Civil Application with delay of three years and therefore, for which the Respondent cannot be faulted. Therefore, a starting period of payment of arrears, it will be equitable to fix the date on which the present Civil Application was filed i.e. 12 May 2014.

6. Considering the facts and circumstances, however it will be appropriate if an opportunity is given to the Applicant to move for a suitable enhancement, if the Civil Revision Application is not disposed off within period of two years from today. Accordingly the Civil Application is disposed of as under :-

(i) The Respondent will deposit an amount of Rs.2,50,000/- per month in the Registry of this Court on or before 10th day of each month and shall keep paying the same till disposal of the Civil Revision Application or subject to modification as indicated above.

(ii) It is made clear, looking at the financial status of the Respondent, that for any default in depositing the

amount, the interim relief shall be vacated.

(iii) As far as the arrears are concerned, time is granted to the Respondent to deposit the same within period of eight weeks from today.

(iv) It is clarified that while depositing the arrears, the Respondent will be entitled to take out in respect of ad-interim compensation deposited by the Respondent pursuant to the order by this Court in this Civil Application.

7. The Civil Application No. 586 of 2014 is disposed of in the above terms.

8. The learned Counsel for the Applicant in Civil Application No. 176 of 2015 states that in view of the disposal of the Civil Application No. 586 of 2014, this application does not survive. It is accordingly disposed of as infructuous.

(N.M. Jamdar, J.)