IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10651 OF 2016

1. Shri Ajay Kumar Balmukund Agarwal and Anr. ..Petitioners.

Vs

1.Smt. Laxmi Bai Ravji Chheda and Ors. .. Respondents

Mr. Rakesh Kumar a/w Mr. Raju Gupta, Advocate for Petitioners.

Ms.Sheeja John i/b M/s. M.P.Sarla & Co., Advocate for Respondents no.1, 2(a) and 2(b).

CORAM : R.G.KETKAR,J.
DATE : 01/10/2016

PC:

1. Not on Board. At the request of Mr. Rakesh Kumar, taken up for admission. Heard Mr. Rakesh Kumar, learned counsel for the petitioners and Ms.Sheeja John, learned counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 15.3.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibits 7, 13 and 18 in Appeal No. 22 of 2014. By that order, the Appellate Court allowed application-Exhibit 7 and rejected application-Exhibit 18 and stayed execution and operation of the Judgment and decree

dated 20.9.2013 passed by the trial Court in R.A.E. & R. Suit No.384/556 of 2006 subject to condition of the petitioners herein depositing a sum of Rs.15,000/- per month in the Court on or before 10th day of each month as compensation for use and occupation of the suit premises from the date of decree,i.e. 20.9.2013 till the decision of the appeal and shall continue to deposit at the same rate on or before 10th day of every succeeding month till the decision of the appeal. The petitioners are at liberty to deposit arrears of compensation for the use and occupation of the suit premises either in lumpsum or in three equal monthly installments from today, i.e. 15.3.2016. In addition, the petitioners were directed to deposit arrears of contractual rent at the rate of Rs.800/- per month from October 2013 to March, 2016 within a period of two weeks from the date of the order and continue to deposit agreed rent at the rate of Rs.800 per month for every succeeding month on or before 10th day of each month. The respondents are permitted to withdraw arrears of rent at the rate of Rs.800/- per month, if deposited by the petitioners, among other directions.

3. In support of this petition, Mr. Kumar has taken me through (1) order dated 10.8.2015 passed by this Court in Writ Petition 8969 of 2014. In paragraph 9, it was noted that though there is substance in the contention advanced on behalf of the

petitioners in the context of the order dated 1.4.2014, there was no reason to interferer with the same at that stage. The order dated 1.4.2014 is to be treated as an ad-interim direction. Parties were given liberty to place further material on record enabling the Appellate Court to determine reasonable compensation. He submitted that in pursuance of the order passed by this Court, the petitioners have placed on record valuation report dated 1.10.2015. The valuer has opined that fair market rate of the property in the area is between Rs.9500/- and Rs.10500/- per sq.ft. The said conclusion was drawn after making inquiries in open market for the rates existing in the nearby areas of similar type of property having business potential. Inquiries from the estate brokers and other sources revealed this rate. He further submitted that capital value of the suit property is Rs. 29,95,229/- and if that figure is multiplied by rate of return i.e. 0.015, it comes to Rs. 3744/-. He, therefore, submitted that the reasonable compensation would be Rs.3750/- per month. He submitted that while fixing the amount of compensation, the court should exercise restraint and should not fix any excessive, fanciful or punitive amount.

4. On the other hand, Ms John supported the impugned order and submitted that considering the carpet area of the suit premises, the Appellate Court has rightly fixed compensation at

the rate of Rs. 15000/- per month. She relied upon paragraph 9 of the decision of Atmaram Properties (P) Ltd Vs. Federal Motors (P) Ltd, (2005) 1 SCC 705.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the Appellate Court has power to impose conditions while granting stay to eviction decree. In the case of Atmaram Properties (P) Ltd, in paragraph 9 the Apex Court has observed thus:

> “Robust commonsense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record - all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors. - MANU/SC/0039/ 1985MANU/SC/0039/1985: AIR1986SC180 , - "commonsense which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants".

6. In the present case, the built up area of the suit premises is 525 sq.ft and carpet area is 400 sq.ft. The suit premises is situate in Majid Bunder and is used for office purpose. The Appellate Court has fixed compensation at the rate of Rs.15000/- Per month, which comes to Rs.37/- per sq.ft per month. In view thereof, I do not find that the Appellate Court committed any

error in fixing the compensation. The Appellate Court has considered the relevant aspect relevant for fixing the compensation as also paragraph 9 of the decision of Atmaram Properties (P) Ltd (supra). It cannot be said that the compensation fixed is unreasonable, excessive, fanciful or punitive. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R.G.KETKAR, J.)