

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 8013 OF 2016

Shri Sadashiv Madhav Parchure

...Petitioner

Versus

Shri Jaykishan Mukundrai Contractor
And Ors.

...Respondents

....

Mr.Pradip R. Kadam, Advocate for the Petitioner.

Mr. R.S. Samant, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 19th July, 2016

P.C.

1. Heard Mr.Pradip Kadam, learned Counsel for the petitioner and Mr.R.S. Samant, learned Counsel for respondent No.1, at length.

2. By this petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.1', has challenged the judgment and order dated 14.6.2016 passed by the Appellate Bench of the Small Causes Court at Bombay below Exhibit-6 in Appeal No.228/2014. By that order, the Appellate Court allowed the application Exhibit-6 filed by defendant No.1 and granted stay to the eviction decree subject to defendant No.1 depositing amount of interim compensation @ Rs.25,000/- per month from 7.3.2014 till disposal of the appeal.

The Appellate Court directed the defendant No.1 to clear the arrears of interim compensation @ Rs.25,000/- per month by 10.7.2016. The Appellate Court directed defendant No.1 to pay interim compensation w.e.f. 1.7.2016 @ Rs.25,000/- per month on or before 10th day of each month. On depositing the amount of interim compensation, the eviction decree as to possession is stayed till disposal of the appeal. The respondents are at liberty to withdraw 50% amount of the interim compensation deposited by defendant No.1 and balance 50% amount of interim compensation deposited by defendant No.1 shall be kept in Fixed Deposit in any of the Nationalized Bank for initial period of one year with liberty to renew the same in each succeeding year with accumulated interest, till disposal of the appeal.

3. In support of this Petition, Mr. Kadam strenuously contended that the suit premises is admeasuring 318 sq. ft. and is used for residential purposes. Having regard to the financial position of defendant No.1, it will not be possible for him to deposit interim compensation @ Rs.25,000/- per month. He submitted that while granting stay, Appellate Court has fixed interim compensation at an exorbitant rate. He therefore submitted that the rate at which the interim compensation is

fixed deserves to be reduced.

4. On the other hand Mr. Samant supported the impugned order. He invited my attention to paragraph-10 of the impugned order and submitted that defendant No.1 did not produce any material in support of his contentions.

5. I have considered 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 suit premises admeasures 318 sq. ft and is situate at Ranade Road, Dadar (West), Mumbai – 400 028. The suit premises is situate near Dadar Railway Station and Dadar Market is opposite the building where the suit premises is situate. Thus the suit premises is situate in a prime locality. In paragraph-10 of the impugned order, the Appellate Court noted that respondent No.1 had annexed valuation report and also relied upon the instances of leave and licence agreement. Defendant No.1 did not produce any material in rebuttal. After considering the material on record, the Appellate Court held that Rs.25,000/- per month will be reasonable amount of compensation. In view thereof, I do not find that the Appellate Court committed any error in passing the impugned order. No case is made out for invocation of

powers under Article 227 of the Constitution of India. Hence, petition fails and the same is dismissed.

6. Mr. Kadam submits that by clause (2) of the operative part of the order, defendant No.1 is directed to deposit arrears of interim compensation @ Rs.25,000/- per month by 10.7.2016. He submits that said period may be extended by a period of 12 weeks from today. He assures that defendant No.1 will not apply for further extension of time in that regard. In view this assurance, notwithstanding dismissal of the petition, the period stipulated in clause (2) of the operative part of the impugned order is extended by a period of 12 weeks from today subject to clear understanding that the request for further extension will not be entertained. By way of abundant caution, it is clarified that defendant No.1 will go on depositing interim compensation w.e.f. 1.7.2016 @ Rs.25,000/- per month on or before 10.8.2016 and will go on depositing the amount at the same rate on or before 10th day of next succeeding months. Defendant will deposit arrears of interim compensation @ Rs.25,000/- per month within 12 weeks from today. Order accordingly.

(R. G. KETKAR, J.)