

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10284 OF 2016

Anil Bharat Savlani ... Petitioner
Vs.
Mohamedali Abdul Kadar Patel and another ... Respondents

Mr. Vivek Walawalkar i/b. Mr. Sameer R. Bhalekar a/w. Ms Vidita S. Bhalekar
for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 27, 2016

P.C. :

Heard Mr. Walawalkar, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.3' has challenged the judgment and order dated 28.06.2016 passed by the Appellate Bench of the Small Causes Court below exhibit-6 in Appeal No.233 of 2015. By that order, the appellate Court allowed the application made by the defendant No.3 under Order 41, Rule 5 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for staying executing of the judgment and decree dated 21.04.2015 passed by the learned Judge in R.A.E. Suit No.129/200 of 2009 subject to defendant No.3 depositing sum of Rs.19,000/- per month from the date of the decree as compensation for the use and occupation of the suit premises during the pendency of the appeal, among other directions.

3. In support of this Petition, Mr. Walawalkar has taken me through the valuation report relied by the plaintiff, and in particular, he has invited my attention to - (i) type of property; (ii) built up area; and (iii) valuation. He submitted that the suit premises is situate in a locality

which is congested and has difficult approach road to the godown. It has no open spaces. The premises is not self-content and rather without any special facilities. He submitted that the valuer has certified that the carpet area of the godown is 51.10 sq.mtrs. and the built-up area is 61.32 sq.mtrs. The valuer opined that land and building rate applicable in the present case is Rs.1,03,050/- sq.mtrs. Based on the built-up area, the valuer made the valuation at Rs.63,19,026/- (1,03,050 sq.mtrs. x 61.32 sq.mtrs.). If instead of that, multiplying the Land and Commercial Building Rate of Rs.1,03,050 by 51.10 sq.mtrs, it will come to Rs.52,65,855/-, and ultimately the monthly amount of compensation will be Rs.35,105/-. As against this, the appellate Court has fixed interim compensation @ Rs.19,000/- per month. He also relied upon the decision of the learned Single Judge of this Court in the case of ***Majid Ahmedbhai Omerbhoy Vs. Rashid Sattar Omerbhoy***, 2005 (4) All.M.R. 215 and in particular paragraphs 15 and 17. In paragraph 15, the learned Single Judge considered the arguments advanced by the parties and in paragraph 17, it was observed that the market value has to be fixed on the basis of industrial / office user and cannot be fixed on the basis of shop / commercial user because it is not a shop. The suit premises therein was a flat situate on the second floor. It was observed that even if it is taken as a godown or it is taken as office, still, both, the market value of the premises will have to be fixed on the basis of industrial/office user and not on the basis of shop/commercial user.

4. Mr. Walawalkar also relied upon the Ready Reckoner of Mumbai and Suburban Mumbai District. He submitted that rate of land plus building in per square feet in respect of residential building and building in industrial area, by and large, is one and the same. He also submitted that under Regulation 9 of the Development Control Regulations for Greater Mumbai 1991, land user and manner of development is laid

down. Industrial user is bifurcated in several heads, amongst them are godown / warehousing / cold storage. He submitted that as the land use of godown is covered in the industrial user, the Ready Reckoner applicable in respect of the industrial user should be adopted. Rate of land plus building in residential building in industrial area, by and large, is same, and therefore, the appellate Court was not justified in treating the user of godown as a commercial / shop. In short, he submitted that the appellate Court should have treated user as industrial user for which the rate of land and building is identical / somewhat similar with rate of land and building in residential building. He has also invited my attention to the Ready Reckoner in respect of commercial user, industrial user and residential building. The rate in respect of premises situate in industrial area is on the lower side as compared to premises situate in the commercial user and by and large the rate in respect of industrial area and the residential building is identical.

5. I have considered the submissions advanced by Mr. Walawalkar. I have also perused the material on record. It is not in dispute that the suit premises is used for godown purposes and is situate in Chira Bazar area. The carpet area is 550 sq.ft. and the built up area is 660 sq.ft. It is not in dispute that plaintiff has relied upon the valuation report dated 18.07.2015 of R.R.Pednekar, Architect and Government Recognized Valuer. As against this, defendant No.3 did not produce any valuation report in support of his case for fixing of reasonable compensation. Even if I accept the submission of Mr. Walawalkar that valuation should be made on the basis of carpet area of 51.10 sq.mtrs. and not built up area 61.32 sq.mtrs., nonetheless, the reasonable rent comes to Rs.35,000/-. As against this, the appellate Court has fixed the interim compensation @ Rs.19,000/- per month.

6. Mr. Walawalkar relied upon the Ready Reckoner in respect of residential building and the premises in industrial area to contend that by and large, rate of land plus building in these two areas is almost identical. In other words, his submission is that the interim compensation should be fixed by treating user of the godown as residential user. It is not possible to accept this submission.

7. In the case of **Majid Ahmedbhai Oomerbhoy** (*supra*), the learned Single Judge was considering the question of fixation of royalty charges in respect of flat No.5, second floor situate at Marine Drive, Veer Nariman Road, Mumbai and flat No.2-A, 2nd floor, Worli. In paragraph 17, the learned Single Judge observed thus,

“17. After considering the argument on both the parties that the market value of the said property should be fixed on the basis of the area of Veer Nariman Road and not on the basis of Marine Drive area, I am also of the opinion that the market value should be fixed on the basis of industrial / office users of the said premises. It cannot be fixed on the basis of shop/commercial user because it is not a shop. It is actually a flat and situated at 2nd Floor of the said building. Even if it is taken as godown or it is taken as office still both the market value of the premises will have to be fixed on the basis of industrial/office user and not on the basis of shop/commercial user. I therefore hold that the area has to be computed on the basis of market value of the said premises of industrial/ office user by the Court Receiver, High Court Mumbai.”

8. Perusal of paragraph 17 extracted hereinabove shows that the market value should be fixed on the basis of industrial / office user of the premises. It cannot be fixed on the basis of shop / commercial user because it is not a shop. Even if it is taken as godown or it is taken as office still both the market value of the premises will have to be fixed on the basis of industrial/office user and not on the basis of shop/commercial user. It may be that Ready Reckoner in respect of commercial premises and rate in respect of industrial area as compared in commercial premises is on the lower side. That by itself, cannot

mean that the Court will be justified in fixing interim compensation considering godown is not a commercial user. Godown is essentially used as commercial purpose though it may fall in the industrial user under the Development Control Regulations. In view thereof, I do not find that the appellate Court committed any error in fixing interim compensation @ Rs.19,000/- per month in respect of godown situate in Chira Bazar, which is a commercial area. While fixing the interim compensation, the appellate Court has also referred to paragraph 9 of decision of the Apex Court in the case of ***Atma Ram Properties (P) Limited Vs. Federal Motors (P) Limited*, (2005) 1 SCC 705**. That apart, as noted earlier, defendant No.3 did not produce any valuation report. Appellate Court has considered the valuation report submitted by the plaintiff and fixed interim compensation @ Rs.19,000/- per month. In view thereof, I do not find that the appellate Court committed any error in fixing the interim compensation. Petition fails and the same is dismissed.

9. At this stage, Mr. Walawalkar seeks extension of time by two weeks for depositing the arrears. Extension as prayed for is granted. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab