

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

WRIT PETITION NO.8517 OF 2015

Rukmani Mulchand Rajpal : Petitioner.
Versus
Jagjitsingh Pratapsingh Ochani and ors. : Respondents.

**Mr. Aditya Thakkar a/w Mr. R R Pandey i/by Mr. d P Jaiswal for the
Petitioner.**
Ms. Mona Mehta for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 16th February 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 23/06/2015 passed by the Appellate Bench of the Small Causes Court by which order the Application for stay of the decree being Exhibit 7 came to be allowed and the decree came to be stayed on the conditions mentioned in the operative part of the said order dated 23/06/2015.

2 The principal contention is that the Appellant i.e. the Petitioner herein is directed to pay monthly compensation at the rate of Rs.15,000/- per month with effect from May 2014 to June 2015 in the Court within a period of three months from date and thereafter every month. The said order fixing the monthly compensation of Rs.15,000/- is challenged on the ground that the said amount is excessive and unreasonable.

3 The learned counsel for the Petitioner submitted that the suit premises is a barrack out of the barracks wherein the refugees from Pakistan came and settled post the partition. The learned counsel has drawn this Court's attention to the photographs of the said premises.

4 Per contra, the learned counsel appearing for the Respondents herein i.e. the decree holders seeks to draw this Court's attention to the conduct of the Petitioner herein which is observed in paragraph 7 of the impugned order. The Appellate Bench of the Small Causes Court has referred to the fact that the Petitioner herein at one point of time was ready to relinquish the tenancy by accepting Rs.20,00,000/- which thereafter was increased to Rs.22,00,000/- and again reduced to Rs.20,00,000/-. It is therefore the contention of the learned counsel for the Respondents that having regard to the said conduct, the amount fixed at Rs.15,000/- per month by the Appellate Bench of the Small Causes Court does not merit any interference at the hands of this Court.

5 Having heard the learned counsel for the parties, I have considered the rival contentions. It is required to be noted that the Appellate Bench of the Small Causes Court has fixed the compensation at Rs.15,000/- by adverting to the fact that the premises are located in middle class locality at LBS Marg, Mulund Railway Station, Suburb of Mulund, and is maintaining

standard of living in the said area. The Appellate Bench of the Small Causes Court has also referred to the conduct of the Petitioner in first making the offer of settlement and thereafter reneging from the same. In my view, the Appellate Bench of the Small Causes Court has totally misdirected itself by considering or applying the factors which are not relevant for fixing the interim compensation in respect of the premises in question pending the appeal. It is well settled by the judgment in *Atma Ram Properties (P) Ltd. v/s. M/s. Federal Motors Pvt. Ltd.* reported in (2005) 1 SCC 705 that the compensation fixed should not be an excessive, fanciful and punitive amount. The fact that the premises are located in the barracks which were meant for the refugees coming from Pakistan cannot be lost sight of. The photographs of the premises show the condition in which the premises are at present. The premises are with asbestos roof. The said fact has not been denied on behalf of the Respondents. The inside position of the premises also shows that the premises are not in a very good condition.

6 In my view taking judicial notice of the fact that the suit premise is a barrack with asbestos roof and not in a good condition, the Appellate Bench of the Small Causes Court ought to have considered the matter from the said aspect rather than getting swayed by the fact that the Petitioner has refused to enter into a compromise. In my view, therefore, the amount fixed at Rs.15,000/- per month is excessive and unreasonable and is therefore required

to be reduced to Rs.8000/- per month. The impugned order dated 23/06/2015 would accordingly stand modified to the said extent i.e. the amount fixed at Rs.15000/- per month would accordingly stand substituted by the amount of Rs.8000/- per month. Since the time has already expired on 15/07/2015 and since the period of 6 months has already over, the Petitioner is directed to deposit an additional amount of Rs.10,000/- in total which would compensate the decree holders on account of non-payment of the amount as directed by the Appellate Bench of the Small Causes Court. The amount along with additional amount of Rs.10,000/- to be deposited within four weeks from date as the time has already got over in July 2015. If the amount is not deposited, the legal consequences of the same would undoubtedly follow. For a period of four weeks i.e. till 15/03/2016 the execution proceedings would not be proceeded with. The impugned order of the Appellate Bench of the Small Causes Court would accordingly stand modified in terms of the above. With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]