

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9986 OF 2015

Shree Thakurdwar Jain Shwtamber
Moorti Poojak Sangh (Prop.) Trust
and Ors

...Petitioners

Versus

Vasav Enterprises Pvt. Ltd.
And Ors

...Respondents

....

Mr. Vishal Kanade i/b. D.S.R. Legal, for the Petitioners.
Mr.Simil Purohit a/w. Mr. Manish Doshi i/b. Vimdalal & Co. for
Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 17th June, 2016

P.C.

1. Heard Mr. Vishal Kanade, learned Counsel for the petitioners and Mr. Purohit, learned Counsel for respondent No.1 at length.

2. By this petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendant No.3' have challenged the judgment and order dated 11.11.2014 passed by the Appellate Bench of the Court of Small Causes at Bombay below Exhibit-6 in 2(b)(i) Appeal No.179/2014. By that

order, the Appellate Court allowed the application Exhibit-6 filed by defendant No.3 seeking stay of execution of the eviction decree passed by the trial Court on 16.7.2013 subject to the condition of defendant No.3 depositing sum of Rs.36,000/- per month on or before 5th day of each month as compensation for the use and occupation of the City Survey No.2217 admeasuring 116.22 sq. mtrs situate at Dr. Babasaheb Jaikar Marg, Thakurdwar, Mumbai-400 002 (for short, 'suit premises') from the date of the decree dated 16.7.2013 till the decision of the appeal. Defendant No.3 are at liberty to deposit the arrears of compensation for the use and occupation of the suit premises either lump sum or in three monthly equal installments from today i.e. 11.11.2014. The office of the Court of Small Causes, Mumbai is directed to invest the amounts, in a Nationalized Bank initially in recurring deposit account for one year and thereafter for the similar period of one year each pending the appeal subject to defendant NO.3 neither parting with possession nor creating third party interest in the suit premises during pendency of appeal.

3. In support of this Petition, Mr. Kanade submitted that

defendant No.3 use the suit premises as a temple for the people professing Jain religion. In other words, the suit premises is used for religious and charitable purposes. The Appellate Court has granted stay subject to depositing Rs.36,000/- per month which is on higher side.

4. I do not find any merit in this submission. The Appellate Court considered the valuation report submitted by Srinivas M. Kini & Co. by the respondent – landlord. By investment method, the reasonable market rate was arrived at Rs.2,40,509/- per month. On market rental method the same was arrived at Rs.3,62,000/- per month. The Appellate Court relied upon the conveyance deeds that were considered by the trial Court. The plaintiffs claimed to have purchased the suit property by a conveyance deed dated 9.3.2005 where the agreed consideration for entire area was mentioned as Rs.2,65,00,000/-. The rate per square meter comes to Rs.4322/- and accordingly valuation as per the agreed consideration shall be Rs.5,02,337/-. The Appellate Court considered this rate on assumptive value of Rs.6,00,000/- and accordingly fixed the compensation at Rs.36,000/- per month.

5. In my opinion, it cannot be said that the interim compensation fixed by the Appellate Court is exorbitant or unreasonable. Having regard to the fact that the suit premises admeasures 116.22 sq. mtrs. and is situate at Thakurdwar which is in the heart of the city, I do not find that the Appellate Court committed any mistake. Whereas the plaintiffs produced the report of valuer, defendant No.3 did not produce any material. In view thereof, 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.)

Deshmane (PS)