IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.346 OF 2013

IN

CIVIL APPLICATION NO.1239 OF 2012

IN

WRIT PETITION NO.3436 OF 2011

AND

CIVIL APPLICATION NO.350 OF 2013

IN

CIVIL APPLICATION NO.1249 OF 2012

IN

WRIT PETITION NO.3503 OF 2011

The Saraswat Co-operative Bank Limited .. Applicant

IN THE MATTER BETWEEN

Smt. Madhuri Madhav Singh Sampat .. Applicant

Versus

Shri. Maneklal Ramlal Shivare and others .. Respondents

Mr. G. V. Murti, Mr. Dakshesh Vyas, Mr. Durgaprasad Sabnis, Ms. Bhakti Nadkarni a/w Mr. Durgesh Kulkarni i/by Durgaprasad Sabnis, for the Applicant.

Ms. Rajkumari C. Nichani, for the Respondents.

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

P.C.

1. The above Civil Applications being No.346 of 2013 and 350 of

2013 have been filed for setting aside of the order dated 20.07.2012 passed by a Learned Judge of (V. M. Kanade, J.) in Civil Application No.1239 of 2012 and Civil Application No.1249 of 2012 filed in the above Petitions. The said Civil Application Nos.1239 of 2012 and 1249 of 2012 were filed by the Respondents/landlords who are the heirs of the original landlords seeking the reliefs which have been mentioned in the said Civil Applications. The said reliefs were inter-alia to the following effect :-

> "**Civil Application No.1239 of 2012**
>
> (a) that the Respondent No.1 be ordered and directed to deposit such amount as this Hon'ble Court deems fit towards the compensation from the date of the suit and the Applicant be allowed to withdraw the said amount;
>
> (b) that the Respondent No.2 be ordered and directed to deposit Rs.10,000/- p.m. in terms of the said order dated 5th July 2011 along with further sum of Rs.23,000/- per month in Court as already ordered by the Small Causes Court, Bombay on 05.01.2012;
>
> (c) that the Respondent be ordered and directed to pay the Repair Cess dues as demanded;"
>
> "**Civil Application No.1249 of 2012**
>
> (a) that the Respondent No.1 be ordered and directed to deposit Rs. 10,000/- p.m. as already ordered by the Small Causes Court from the date of the suit and the Applicant be allowed to withdraw the said amount;
>
> (b) that the Respondent No.2 be ordered and directed to deposit Rs.10,000/- p.m. in terms of the said order dated

> 5th July 2011 along with further sum of RS.23,000/- per month in the Small Causes Court at Bombay instead of depositing in the account of the Respondent No.1;
>
> (c) that the Respondent be ordered and directed to pay the Repair cess dues as demanded;"

2. The said Writ Petitions have been filed by the original tenants challenging the decree passed by the Small Causes Court as confirmed by the Appellate Bench of the Small Causes Court. The above Civil Applications have been filed by the Saraswat Bank which has been sublet the premises in question. The said premises have been identified in the order passed by the Learned Judge (V. M. Kanade, J.) as premises No.1A and premises No.1B. The Learned Single Judge of this Court has by the said order dated 20.07.2012 directed the Applicant to comply with the interim directions issued by this Court vide order dated 05.07.2011. Direction was also issued to the Applicant in Civil Application No.625 of 2012 i.e. Sudeshkumar that he also pay an amount of Rs.10,000/- per month as per the said order dated 05.07.2011. In view of the fact that the Saraswat Bank was in occupation of the premises in question, the Learned Single Judge deemed it appropriate to direct the said Saraswat Bank to pay an amount of Rs.1,00,000/- in respect of both the premises from the date of the decree within a period of four weeks from the date of the order. The said amount was quantified on the date of the order as Rs.76,00,000/- up to July 2012 in Civil Revision Application No.458 of

2011 and Rs.45,00,000/- up to July 2012 in Civil Revision Application No.457 of 2011. This the Learned Judge deemed it appropriate in view of the law laid down by the Apex Court in ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.*** reported in ***(2005) 1 SCC 705***. The Learned Judge has extracted the relevant excerpt from the said judgment in paragraph 4 of the said order dated 20.07.2012. The Learned Judge has observed that though decree has been passed the Saraswat Bank did not hand over possession and also refused to pay any amount either to the original tenant or to the landlord. The Learned Judge therefore deemed it appropriate to issue a direction to the Saraswat Bank to pay the said amount as condition for granting interim stay to the judgment and decree of the Trial Court as confirmed by the Appellate Court. The Learned Judge has also observed that though the order dated 05.07.2011 was passed and though the notices of the said Civil Application Nos.1239 of 2012 and 1249 of 2012 were served on the Saraswat Bank, the Saraswat Bank neither complied with the said order dated 05.07.2011 nor appeared before the Learned Judge. The Learned Judge has issued a direction that the bills which are issued by the Mumbai Municipal Corporation shall be paid by the Saraswat Bank. In so far as the amounts which were directed to be deposited, it was observed that the said amounts shall be invested in a Nationalized Bank for a initial period of one year.

3. The setting aside of the order dated 20.07.2012 passed by the Learned Judge is sought inter-alia on the ground that the original Applicant i.e. the Saraswat Bank in the Civil Revision Application was not heard in the Civil Applications and that there was no material on record to arrive at the figure of Rs.1,00,000/- per month to be paid as compensation in respect of each of the premises in terms of the judgment in *Atma Ram Properties* case (*supra*).

4. The Civil Application Nos.346 of 2013 and 350 of 2013 have been replied to on behalf of the Respondents/landlords. The relief sought by way of the said Civil Applications has been opposed to on behalf of the Respondents/landlords.

5. In so far as the first ground that the Saraswat Bank was not heard is concerned, in my view, the said ground is thoroughly misconceived having regard to the fact that the Saraswat Bank was aware of the ad-interim order dated 05.07.2011, and that it was also served with the notices in respect of the Civil Applications filed by the landlords. The Learned Judge who passed the order dated 20.07.2012 has in terms observed that the Saraswat Bank has not chosen to remain present though it was aware of the order dated 05.07.2011 as also the fact that notices of the Civil Applications filed by the landlords were served upon it. In my

view, therefore, the Saraswat Bank has itself to blame if it has not chosen to appear before the Learned Judge when the order dated 20.07.2012 was passed by him in the said Civil Applications being Nos.1239 of 2012 and 1249 of 2012.

6. Now coming to the next ground that there was no material placed on record so as to justify the fixation of the compensation at Rs.1,00,000/- per month. It is required to be noted that the two premises are situated at Thakurdwar junction which is in Girgaum in South Mumbai. The said area can be said to be both commercial as well as residential area. Judicial notice can be taken of the fact that around the suit premises are all commercial premises wherein various businesses are being carried out. This Court was therefore of the view that the compensation fixed at Rs.1,00,000/- for each of the premises was reasonable considering the fact that both the premises were commercial premises and admeasuring 485 sq.ft. each in a busy commercial and residential area of South Mumbai. However, to assuage any grievance that the Saraswat Bank may have that the said amount has been fixed without any material on record, during the course of the hearing of the above Civil Applications this Court had offered to the Saraswat Bank that an approved Valuer on the panel of this Court can be appointed to submit a Valuation Report in respect of the two premises. The Learned Counsel appearing on

behalf of the Applicant Mr. Vyas had sought time to take instructions from the Saraswat Bank. However, the Saraswat Bank did not accept the said offer and submitted that it would accept the amounts fixed at Rs.1,00,000/- per month for each of the premises. Hence, the challenge to the fixation of the compensation at Rs.1,00,000/- per month therefore fails and no interference is therefore called with the fixation of the compensation at Rs.1,00,000/- per month. In my view, therefore, no relief can be granted to the Saraswat Bank in the above Civil Application Nos.346 of 2013 and 350 of 2013. The Civil Applications are accordingly rejected.

[R.M. SAVANT, J]