

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10035 OF 2016**

Bipinbhai Shantilal Doshi

..Petitioner.

Vs

Shri Mahendra Prabhudas Mehta
and Ors

.. Respondents

Mr. Lalit V. Jain, Advocate for Petitioner.

Mr. J.A.Udaipuri i/b Udaipuri & Co. , Advocate for Respondents
no.2 and 3.

**CORAM : R.G.KETKAR,J.
DATE : 21/09/2016**

PC:

1. Heard Mr. Lalit Jain, learned counsel for the petitioner and Mr. J.A.Udaipuri, learned counsel for the respondents at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 25.7.2016 passed by the Appellate Bench of the Small Causes Court at Bombay below Exhibit-8 in Misc. Appeal No. 308 of 2015. By that order, the Appellate Court allowed the application Exh.8 and granted stay to the Judgment and decree dated 25.9.2013 passed by the learned trial Judge in R.A.E. Suit No. 26/37 of 2011 as to possession only subject to the petitioner depositing the interim amount of compensation at the rate of Rs. 12,000/- per month from the

date of the impugned decree till final disposal of the appeal, among other directions.

3. In support of this Petition, Mr. Jain strenuously contended that there are no facilities in the building where the suit premises is situate. The building is more than 50 years old and the Appellant Court should have fixed reasonable compensation. The Appellate Court while granting stay has fixed compensation at the rate of Rs.12,000/- per month which is exorbitant.

4. On the other hand, Mr. Udaipuri supported the impugned order. He submitted that the carpet area of the suit premises is 160 sq.ft and is used for office purpose. For the reasons recorded in paragraphs 9 and 10, the Appellate Court was justified in passing the impugned order.

5. I have considered the 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 160 sq.ft. carpet area and is used for commercial purpose. Suit premises is situate in Carnac Bunder where industries are situate. For an area of 160 sq.ft, the Appellate Court has fixed Rs.12,000/-, which comes to Rs.75/- per sq.ft. In view thereof, I do not find that the Appellate Court has committed any error in passing the impugned order. The impugned order is purely discretionary. The defendant was not in

a position to demonstrate that discretion was exercised arbitrary. For the reasons recorded in paragraphs 9 and 12 of the impugned order no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

6. At this stage, Mr. Jain orally applies for extension of four weeks time for depositing arrears of compensation. He assures that the petitioner will not apply for further extension of time. In view thereof, time stipulated in the impugned order is extended for a period of four weeks from today, with clear understanding that no application for extension of time is made on the next date of hearing.

(R.G.KETKAR, J.)