

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.9958 OF 2016**

Ashokkumar Dhanrajji Kothari ... Petitioner
V/s.
Harshad Kevalchand Vora & Ors. ... Respondents.

...
Mr. Joel D'souza i/b. Mr. S. M. Kamble for the petitioner.
Mr. Suneel Mogre i/b. Mr. Raj Baid for the respondents.
...

CORAM : R. G. KETKAR, J.

DATE : 08/09/2016.

P.C.:

1. Heard Mr. Joel D'souza, learned counsel for the petitioner and Mr. Suneel Mogre, learned counsel for the respondents at length. Rule. Mr. Suneel Mogre waives service on behalf of the respondents. At the request and by consent of the parties, rule is made returnable forthwith and the petition is taken up for final hearing.

2. By this petition, under Article 227 of the Constitution of India, the petitioner (herein after referred as 'defendant') has challenged the judgment and order dated 01.08.2016 passed by the Appellate Bench of the Small Causes Court at Bombay below Exh.9 in (A-1) Appeal No.78 of 2015 in RAE & R Suit No.1030/1789 of 2001. By that order, the Appellate Court allowed the application made by the defendant under Order XL1 Rule 5 of Civil Procedure Code, 1908 (for short 'C.P.C.') and stayed the execution of the judgment and decree dated 19.12.2014 passed by the trial court in RAE & R Suit No.1030/1789 of 2001 till the final disposal of the appeal subject to depositing monthly compensation @Rs.20,000/- from the date of passing of the decree till final disposal of

the suit. The defendant is directed to make good the arrears within one month from the date of passing of the order and to go on depositing Rs.20000/- per month monthly compensation on or before 10th day of each month. The amount so deposited was ordered to be invested in any nationalized bank initially for the period of one year and thereafter, subsequently, after each six months. The defendant is restrained from creating third party rights.

3. In support of his petition, Mr. D'souza submitted that while fixing the compensation the appellate court has not dealt with;

1. area of suit premises
2. user of the suit premises
3. locality where the suit premises is situate
4. facilities available in the suit premises.
5. age of the building etc.

4. The appellate court simply referred to decisions in

1. *Atmaram Properties (P) Ltd Vs. Federal Motors (P) Ltd. Reported in (2005) 1 Supreme Court Cases 705.*
2. *Anderson Wright and Co. Vs. Amar Nath Roy & Ors. Reported in Air 2005 Supreme Court 2457*
3. *Chandrakant Dhanu & Anr. Vs. Sharmila Inder Kumar Kapur & Ors. Reported in 2009(1) Bom C.R. 698*
4. *Gopal Dattarya Chapahlkar Vs. Govind Yeshwant Borkar & Ors. Reported in 1997 II LJ 462.*

5. In paragraph 23, the appellate court has observed that taking into consideration the facts that the suit premises is situated in red light area and age of the suit building is more than 65 years, the reasonable amount of compensation is Rs.20,000/-. He submitted that the impugned order reflects non application of mind. He Therefore,

prayed that the impugned order may be set aside and the matter may be remitted to the appellate court for de novo consideration.

6. Mr. Mogre consents for adopting this course. The learned counsel for the parties state that the parties will appear before the appellate court on 19.09.2016 and for that purpose no fresh notice be issued to them. The learned counsel further submit that appellate court be directed to dispose of appeal in a time bound manner.

7. In view thereof and by consent of the parties the petition is disposed of in following terms;

1. The impugned order is set aside and application below Exh.9 is restored to file of the appellate court.

2. The parties are at liberty to file material in support of their case. This exercise shall be done by serving copies in advance on the other side before 19.09.2016.

3. The parties shall appear before the appellate court on 19.09.2016 at 11.00 am for that purpose no fresh notice be issued to them.

4. The appellate court is requested to dispose of application within two weeks from 19.09.2016 by considering various factors mention in paragraph 5 of the order which are illustrative in nature and not exhaustive.

8. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)