

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 103/2015
IN
CIVIL REVISION APPLICATION NO. 773/2013
IN
APPEAL NO.136/2006
IN
RAE SUIT NO.3408/1986

M/s. M. S. Commercial Corporation & Anr. ...Applicants/
original defendants
V/s.

Mohanlal Ghanshamdas kukreja & Ors. ...Respondents/
original plaintiff

Mrs. R. R. Khosla a/w. Mr. Prakash Ganwani for the Applicant
None for the Respondent.

CORAM: K.K. TATED, J.
DATED : MAY 3, 2016

PC. :

1. Heard the learned counsel for the applicant. None for the original defendant Nos.1 and 2 (Appellant in the Civil Revision Application) when the matter was called out.

2. This application is made by the plaintiff landlord for fixing monthly compensation in respect of the suit premises i.e. Room No.111 at Commercial Chambers, 72/80, Nagdevi Cross Lane, Mumbai – 400 003 till hearing and final disposal of the Civil Revision Application.

3. In the present proceedings, the applicant plaintiff had instituted RAE Suit No.3408/1986 for vacant and peaceful possession of the suit premises which was decreed by the Trial Court on 14.12.2005. Thereafter the defendant Nos.1 and 2 preferred appeal No.136/2006. During pendency of the appeal, the appellate court stayed the order passed by the Trial Court and directed the defendant Nos.1 and 3 to deposit Rs.1000/- by way of interim compensation till hearing and final disposal of the appeal. That order was passed by the Appellate Bench of Small Causes Court below exhibit 5 in appeal No.136/2006 on 15.11.2010. Thereafter the appeal was decided on its own merits and dismissed by order dated 05.12.2012. Hence, the defendant Nos.1 and 2 made the present Civil Revision Application.

4. In the Civil Revision Application, Rule was issued by this court by order dated 24.09.2014. At the same time, this court granted ad-interim relief in terms of prayer clause (a) with liberty to the parties to file an affidavit showing present market rent of the suit premises.

5. The applicant plaintiff made the civil application for vacating the interim stay granted by this court with liberty to the applicant to execute the decree passed by the trial court. In this application, the applicant claimed compensation @ Rs.14200/- pm. This court, by order dated 26.06.2015 directed defendant Nos.1 and 2 to deposit in this court sum of Rs.7500/- pm w.e.f. 01.10.2014. This court further directed defendant Nos.1 and 2 to deposit the arrears within 4 weeks from the date of order.

6. The learned counsel for the plaintiff submits that though this court, by order dated 26.06.2015 directed defendant Nos.1 and 2 to deposit sum of Rs.7500/- pm from 01.10.2014, defendant Nos.1 and 2 failed and neglected to comply with the said order.

7. The learned counsel for the plaintiff submits that in the present proceedings, defendant Nos.1 and 2 are in possession of the suit premises which is situated at Nagdevi Cross Lane, Mumbai – 400 003. He submits that as per the valuation report prepared by Basavraj Masanagi & Co., Government Approved Valuers, Chartered Engineers, Surveyor and Loss Assessor, monthly compensation comes to Rs.9680/-. He submits that the suit premises is admeasuring 110 sq.ft. which is in use of defendant Nos.1 and 2 for commercial purpose. He submits that the railways, bus and taxi facilities are available within the locality where the suit premises is situated. He submits that within the distance of 1 km from Masjid Bunder and Mumbai CST, the suit premises is situated. He submits that considering the valuation report dated 29.06.2009 placed on record by the plaintiff and the locality in which the suit premises is situated, this Hon'ble Court be pleased to direct defendant Nos.1 and 2 to deposit at least Rs.7500/- pm. by way of interim compensation during pendency of the Civil Revision Application.

8. In the present proceedings, defendant Nos.1 and 2 filed Affidavit-in-Reply dated 15.01.2016, wherein defendant Nos.1 and 2 stated that they are depositing Rs.1000/- p.m. by way of compensation as awarded

by the Appellate Bench of the Small Causes Court by order dated 15.06.2010 below exhibit 5 in appeal No.136/2006.

9. Heard the learned counsel for the parties at length. The Apex Court in the matter of *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt.Ltd., 2005 (1) SCC 705* and *The State of Maharashtra and Anr. vs. Super Max International Pvt.Ltd. and Ors., 2009(9) SCC 772* held that at the time of fixing interim compensation, same be fixed on the basis of rent paid by the tenant, ready reckoner and market value of the suit premises.

10. In the present proceedings, the suit premises is in use of defendant Nos.1 and 2 for commercial purpose. Considering the valuation report dated 29.06.2009 produced by the applicant, the location where the suit premises is situated, I am of the opinion that pending the hearing and final disposal of the Civil Revision Application, defendant Nos.1 and 2 to deposit interim compensation @ Rs.7500/- pm in the Registry of this court from 01.01.2013 as the appellate court has passed the decree on 05.12.2012.

11. Hence, following order is passed:

- a. Civil Application is partly allowed.
- b. The defendant Nos.1 and 2 are directed to deposit the interim compensation in respect of the suit premises @ Rs.7500/- pm in the Registry of this court.
- c. The defendant Nos.1 and 2 to deposit interim compensation from 01.01.2013.

- d. The defendant Nos.1 and 2 to deposit arrears of compensation from 01.01.2013 till May 2016 within 8 weeks from today.
- e. The defendant Nos.1 and 2 to deposit monthly compensation from June 2016 on or before 10th day of each month till further orders in the Registry of this court.
- f. If amount is deposited as stated hereinabove, the Registry is directed to invest the same in a fixed deposit account of any Nationalized Bank, initially for a period of one year, which shall be continued from time to time, till hearing and final disposal of the Civil Revision Application.
- g. Apart from interim compensation, defendant Nos.1 and 2 to deposit rent amount in the Registry of this court on or before 10th day of each month.
- h. The applicant plaintiff is entitled to withdraw the rent amount from the Registry of this court without furnishing any security.
- i. If there is any default on the part of defendant Nos.1 and 2 to comply with this order, liberty granted to the applicant plaintiff to make appropriate application for vacating interim protection.
- j. Civil application stands disposed off accordingly.

(K.K. TATED, J.)