

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11246 OF 2015

Henry Rebello

.. Petitioner

Versus

Mrs. Kuldip Kaur Chadha

.. Respondent

Mr. D. A. Joseph i/by David Associates, for the Petitioner.

Mr. T. S. Ingle, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 12th FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 30.09.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order, the application filed by the Petitioner for stay of the decree has been allowed on the condition that the Applicant pays or deposits in the Court compensation at the rate of Rs.10,000/- per month since the date of the decree till final disposal of the Appeal. The above Petition has been filed challenging the quantum of compensation fixed at Rs.10,000/- per month. The Petitioner herein is faced with the decree dated 30.08.2013 passed in RAE Suit No.205 of 1992 filed by the Respondent herein i.e. landlord. Against the said decree, the Petitioner has filed an Appeal being Appeal No.51 of 2013. In the said Appeal, the Petitioner filed an application Exh.6 for stay of the decree. In terms of the law laid down by the Apex Court in Atmaram Properties (P) Ltd. and M/s.

Super Max International Pvt. Ltd. The Appellate Bench of the Small Causes Court as a condition for stay of the decree has directed the Petitioner to pay compensation at the enhanced rate of Rs.10,000/- per month from the date of the decree till the final disposal of the Appeal. The reasoning of the Trial Court can be found in paragraph 12 of the impugned order. The Appellate Bench has taken into consideration the fact that the suit premises which includes the front open space with compound wall and the backyard admeasures in total 570 sq.ft. The Appellate Bench has considered the fact that the said premises are situated in Santacruz (East). The Appellate Bench has adverted to the fact that the Respondent/landlord has placed on record a chart to show that as per the Ready Reckoner rates of the Government of Maharashtra which are applicable for the said area, the market rent that would be fetched is to the tune of Rs.19,751/-. It is on the said basis that the Appellate Bench deemed it appropriate to fix the compensation payable at Rs.10,000/-.

2. The impugned order has been challenged by the Petitioner on the ground that there was no material before the Appellate Bench to come to a conclusion that the premises would fetch a rent of Rs.10,000/- per month and therefore, the Appellate Bench of the Small Causes had erred in fixing the compensation at Rs.10,000/- per month. The Learned Counsel appearing on behalf of the Petitioner sought to raise contentions

as regards the nature of the premises, condition of the premises and also sought to dispute the area of the suit premises. It appears that whilst the proceedings were pending in the Trial Court a Court Commissioner was appointed who had submitted his report Exh.25, wherein area of the suit premises was calculated at 576.26 sq.ft. Since there was no material on record by way of contemporaneous Leave and Licence agreements in respect of similar premises and in respect of the area which can be said to be in the close vicinity, the Learned Counsel appearing for the Respondent herein was directed file an additional affidavit to place on record contemporaneous Leave and Licence agreements in respect of the premises admeasuring the same area, situated in the same locality by obtaining copies from the concerned Sub-Registrar's office. Accordingly, additional affidavit dated 08.12.2015 has been filed on behalf of the Respondent. In the said affidavit in paragraph 2 reference is made to a Leave and Licence agreement entered into in respect of Tenement No.A-16/64, Kalina Co-op. Hsg. Society Ltd., Kalina, Santactuz (E), Mumbai-400 098 between one Mrs. Twinder Pal Anand licensor and one Mr. Srinivas Jillellamaudi and Mrs. Radhika Veeramasuneni being the licensee. The premises concerned there are admeasuring 600 sq.ft. built up area and agreed licence fees for a period of twelve months is Rs.23,000/- per month. It is stated that the said premises are about 500 ft. away from the

suit premises in the same Sunder Nagar area.

3. In paragraph 3 reference is made to a Leave and Licence agreement entered into in respect of Flat No.1203, C Wing, H.D.I.L. Premier, Next to Elite Hotel, Kurla (W), Mumbai-400 070. The Leave and Licence therein is between Mr. Bhavesh Babulal Jethwa and Mrs. Jagruti Bhavesh Jethwa - licensor and Mr. Mandeep Singh Kataria - licensee. The premises concerned there are admeasuring 500 sq.ft. and agreed licence fees for a period of 22 months is Rs.23,500/- per month. It is averred that the said premises are also in the close vicinity of the suit premises. Hence, there is material on record to indicate that in respect of premises which are of the same area and in the same locality, in fact one is in the Sunder Nagar area itself, the licence fees is around Rs.23,000/- to 23,500/-. Hence, even if on account of the disadvantages in respect of the suit premises as alleged by the Learned Counsel for the Petitioner some amount is to be deducted, in my view, Rs.10,000/- fixed as compensation pending the Appeal can be said to be more than reasonable. In my view, therefore, the order passed by the Appellate Bench of the Small Causes Court calls no interference in the writ jurisdiction of this Court. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]