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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.31541 OF 2016

Sayed Abdul Hafiz Kadri

..Petitioner.

V/s.

Mrs. Mita Harish Sujan

..Respondent.

Mr.S.M.Vyas for the petitioner.

Mr.A.G. Revankar i/vb. Revankar & Co. for the respondent.

CORAM : N.M. JAMDAR, J.

DATED : 6TH DECEMBER, 2016

ORAL ORDER

Heard the learned counsel for the parties. Since a narrow point is involved in the petition, by consent of the learned counsel for the parties, the petition is taken up for final disposal.

2. The Petitioner has challenged the order dated 20 September, 2016 passed below Exhibit 7 in Appeal No.284/2015 in R.A.E. Suit No.715/1067 of 2010 by the Appellate Bench of the Small Cause Court, Mumbai granting stay to the execution of the decree passed by the Small Causes Court on the condition that the petitioner deposits an amount of compensation @ Rs.20,000/- per month till the disposal of the appeal. The suit was filed by the

Respondent-landlord for eviction of the Petitioner on the ground that the premises are required for bonafide use, that the petitioner is in arrears of rent and that the Petitioner has carried out additional construction and permanent alterations. The suit was decreed by the learned Small Cause Court Judge holding that the Petitioner has carried out permanent alterations and additions to the suit premises and that the petitioner has defaulted in payment of rent. The case of the Respondent-landlord that the premises are needed for bonafide use was negated. It was held that that the Petitioner is trying to create third party interest in the suit premises. Appeal has been filed against the said order in which the impugned order has been passed.

3. The learned counsel for the Petitioner firstly submitted that the compensation will have to be fixed with reference to the 8 sq. ft. which is the area mentioned in the plaint. This submission cannot be accepted. It is the case of the Respondent-landlord that Petitioner has made encroachment to 86 sq. ft., which case has been accepted by the trial Court. The learned counsel for the Petitioner then submitted that the Petitioner has placed on record the Leave and Licence agreement which indicates the rate of Rs.25/- per sq. ft. This Leave and Licence agreement has been considered by the Appellate Bench. The Respondent has placed on record two instances showing the rent of Rs.138/- per sq. ft. and Rs.212/ per sq. ft. The learned counsel for the Petitioner however is justified in making a grievance that when the Respondent has himself placed on record material showing that the rate of Rs138/-

per sq. ft. and Rs.212/- per sq. ft. was not necessary to be the compensation at the rate of Rs.230/- per sq. ft. The Court will have to take various parameters into account. Though the decree is passed on the ground of permanent alterations and additions, the finding of fact is in challenge in the appeal before the Appellate Bench. The Petitioner has also placed on record that the financial capacity of the Petitioner is not sound. Therefore, even assuming that 86 sq. ft. is to be taken into account for fixing the compensation in view of other balancing factors indicated above, in my opinion, it would be appropriate if the compensation is fixed at the rate of Rs.138/- per sq. ft. based on one of the instance filed by the Respondent. The impugned order will stand modified accordingly. The learned counsel for the parties state that if Rs.138/- per sq. ft. is taken into consideration then the compensation will work of to Rs.11,800/- per month.

4. Accordingly, the writ petition is allowed by substituting the figure of Rs.11,800/- in place of Rs.20,000/-. The rest of the impugned order will remain the same, except for paragraph No.2 wherein the date of 10 October, 2016 to clear the arrears stands extended to 10 February, 2017. The writ petition is disposed of in the above terms.

(N.M. JAMDAR, J.)