

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11752 OF 2015

M/s. Ish Homes Private Limited	...Petitioner
<i>Versus</i>	
Ambavi Raghu Patel And Anr.	...Respondents

....
Mr.Khan Javed Akhtar, Advocate for the Petitioner.
Mr. Rajeev s. Matkar, Advocate for Respondents No.1 and 2.
....

CORAM : R. G. KETKAR, J.

DATE : 10th August, 2016

P.C.

1. Heard Mr. Khan Javed Akhtar, learned Counsel for the petitioner and Mr. Rajeev Matkar, learned Counsel for respondents No.1 and 2, at length. Mr. Khan seeks leave to delete respondent No.3 on the ground that against the eviction decree respondents No.1 and 2 have preferred appeal and, therefore, respondent No.3 is not a contesting respondent in the Petition. On the motion made by Mr.Khan, leave to delete respondent No.3 is granted. Amendment shall be carried out forthwith.

2. Rule. Mr. Matkar waives service on behalf of

respondents No.1 and 2. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the judgment and order dated 23.7.2015 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibit-7 in Appeal No.303 of 2015. By that order, the Appellate Court allowed the application made by respondents No.1 and 2, hereinafter referred to as 'defendants No.2 and 3' under Order XLI Rule 5 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') and stayed the eviction decree dated 24.2.2015 passed by the learned trial Judge in R.A.E. & R. Suit No.584/934 of 2007 subject to defendants No.2 and 3 depositing compensation @ Rs.25,000/- per month from 1.3.2015 till the date of the order. Defendants No.2 and 3 are directed to go on depositing further monthly interim compensation @ Rs.25,000/- per month on or before 15th day of each month till final disposal of the appeal. It was made clear that if defendants No.2 and 3 commit breach of any of the

conditions, the stay shall stand vacated automatically. The office is directed to invest the amount of compensation, if deposited, in Nationalized bank in fixed deposit initially for a period of one year and thereafter for similar period till disposal of the appeal. Defendants No.2 and 3 are restrained from creating third party interest in the suit premises during pendency of the appeal.

4. In support of this Petition, Mr. Khan submitted that the plaintiff has produced valuation report dated 21.7.2015 along with reply opposing application Exhibit-7. Appellate Court, however, did not deal with the report and only on the basis of the submissions made on behalf of defendants No.2 and 3 that amount of Rs.20,000/- to Rs.25,000/- per month compensation would be reasonable amount of compensation, directed defendants No.2 and 3 to deposit compensation @ Rs.25,000/- per month. In short, he submitted that the Appellate Court did not comment upon the valuation report produced by the plaintiff which shows that the suit premises admeasures 170 sq. ft. and is a commercial premises. The Valuer has observed that Rs.52,700/- per month would be the

reasonable compensation in respect of the suit premises.

5. On the other hand, Mr. Matkar submitted that along with reply filed on 21.7.2015, the plaintiff has produced the valuation report. Defendants No.2 and 3 did not get an opportunity to file rejoinder as also valuation report in support of their case. He submitted that in case the Court is inclined to set aside the impugned order, defendants No.2 and 3 may be given sufficient time to file rejoinder and also valuation report as also other material. He assures that within three weeks from today, defendants No.2 and 3 will file rejoinder along with valuation report as also other material in support of their case. Perusal of the impugned order shows that the Appellate Court did not deal with the valuation report at all. The Appellate Court should have either accepted in toto or partially or discarded by giving reasons. On this ground alone impugned order deserves to be set aside.

6. In view thereof, Petition is disposed of in following terms:

- [i] Impugned judgment and order dated 23.7.2015 passed by the Appellate Bench of the Small Causes Court at

Mumbai below Exhibit-7 in Appeal No.303 of 2015 is set aside. Application Exhibit-7 is restored to the file of Appellate Court. Defendants No.2 and 3 shall file rejoinder along with valuation report as also other material, if they so desire, within three weeks from today.

- [ii] Appellate Court will deal with the material on record and thereafter dispose of the application within six weeks from today.
- [iii] All contentions of the parties on merits are expressly kept open.
- [iv] In the meantime, till such time the application Exhibit-7 is decided, defendants No.2 and 3 will go on depositing Rs.25,000/- per month as and by way of interim compensation.
- [v] Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)