

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1061 OF 2016**

Kirti Prabhulal Kapadia
Kanchan Prabhulal Kapadia (deleted) : Petitioner.
Versus
Kamlesh Singh Harnamsingh Chowhan : Respondent.

Mrs. Jyotsna V Vyas for the Petitioner.
Mr. Vivek Kantawala a/w Mr. Amey Patil i/by Vivek Kantawala and Co.. for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 16th February 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 10/09/2015 passed by the Appellate Bench of the Small Causes Court by which order the Application (Exhibit 8) for the stay of the decree dated 30/04/2014 passed by the Trial Court in RAE Suit No.111/179 of 2004 was allowed subject to the conditions mentioned in the operative part of the said order dated 10/09/2015.

2 The decree has been stayed by directing the Petitioner i.e. the Appellant before the Small Causes Court to deposit interim compensation at Rs.12,000/- per month towards use and occupation of the suit premises from May 2014 to October 2015, and to continue to deposit the interim monthly compensation at the said rate per month pending the hearing and final disposal of the Appeal.

3 The said deposit was to be made within 3 months of the said order dated 10/09/2015. In so far as the said deposit is concerned, vide clause (6) of the said order it is directed that the said amount deposited shall be invested in any nationalized bank for a period of one year and thereafter renewed if required by the Registrar of the said Court.

4 The fixation of the interim compensation at the rate of Rs.12,000/- per month is challenged on the ground that it is too excessive and unreasonable. It is sought to be contended that the rent for the suit premises is Rs.124/- per month and therefore the increase is 100 times the said rent. The ground that the amount is excessive and unreasonable is sought to be buttressed by the order dated 30/08/2011 passed by the Appellate Bench of the Small Causes Court in Applications (Exhibits 5 and 13) in Appeal No.523 of 2006 concerning the same building wherein the original rent was Rs.5000/- of the premises concerned therein and interim compensation fixed by the Appellate Bench of the Small Causes Court for the grant of the stay was at Rs.25,000/-. It is on the said basis it is sought to be contended that the increase is only 5 times the rent. It is required to be noted that the said premises were commercial premises whereas the suit premises are residential premises.

5 The order dated 06/01/2009 passed by a learned Single Judge of

this Court in Writ Petition No.5182 of 2008 is also sought to be relied upon. By the said order the ex-parte eviction decree has been stayed by imposing costs on the Respondent therein i.e. the tenant by directing deposit of arrears of rent at the rate of Rs.362/- per month in respect of the suit premises.

6 The learned counsel appearing on behalf of the Petitioner sought to raise a contentions which were revolving around the merits of the case of the Petitioner in the Appeal.

7 Per contra, the learned counsel appearing for the Respondent i.e. decree holder Shri Kantawala would contend that the premises are located in a commercial area of Mumbai and are situated near Crawford market which is in South Mumbai and has within its close vicinity Mangaldas Market, Jumma Masjid, Dava Bazar, Zaveri Bazar, Police Commissioner's Office, G.T. Hospital as well as C.S.T.M. Railway station and Marine Lines Railway station are at a walking distance from the suit premises. The learned counsel would also contend that in terms of the ready reckoner rates, the expected return from the premises is calculated at Rs.21655/- per month and therefore the amount fixed at Rs.12,000/- cannot be said to be exorbitant and unreasonable.

8 Having heard the learned counsel for the parties, in my view, the fixation of the amount at Rs.12000/- requires interference. No doubt the ready

reckoner rates can be the barometer for fixing the expected return that the premises would fetch per month. However, the age of the building, the location of the premises in the building etc. also assume relevance. It is required to be noted that the premises are situated on the 4th floor. They are admeasuring 300 sq.ft and are in a building which is around 100 years old. However, it is required to be borne in mind that the building has a lift to go to the upper floors. In my view, the aforesaid factors have not been considered by the Appellate Bench of the Small Causes Court whilst granting the stay and imposing the conditions. Some deductions obviously would have to be made on the said count. In my view, the interest of justice would be served if the amount fixed at Rs.12000/- is brought down to Rs.10000/-. Hence the impugned order dated 10/09/2015 would stand modified accordingly viz. that in the place of figure Rs.12000/- the figure Rs.10000/- would be substituted. Since the time to deposit the amount has already expired in December 2015, the Petitioner is granted 8 weeks time from date to deposit the said amount. If the amount is not deposited within the time stipulated as above, the consequences for non-deposit would obviously follow. The learned counsel for the Petitioner Mrs. Vyas on instructions of the Petitioner states that in so far as the amount of Rs.124/- per month is concerned, which is the rent, the same has been paid up to December 2016. The above Petition is accordingly disposed of in terms of the direction as above.

[R.M.SAVANT, J]