

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.1484 OF 2015

Kakad Housing Corporation ..Petitioner.

V/s.

Rukmani Ramchand Malkani (deceased)

through heir and legal representative

Chandra Wadhuman Thadani ..Respondent.

Mr.Ashish Mishra i/b. N.K.Mundargi for the Petitioner.

Ms.Poonam Shirke i/b. Sachin Gelye for the Respondent.

CORAM : N.M.Jamdar, J.

DATED : 27 January, 2017

ORAL ORDER

Heard the learned counsel for the parties. By order dated 17 August, 2015 the parties were put to notice that the writ petition will be disposed of finally at the stage of admission. Accordingly, the petition is taken up for final disposal.

2. By the impugned order dated 9 October, 2014 passed by the Appellate Bench of the Small Cause Court, on the application Exhibit 8 in 2a Appeal No.50/2011 taken out by the Respondent-

Applicant for stay, has stayed the execution of the judgment and decree dated 9 August, 2011 passed by the Small Cause Court Judge in R.A.E. Suit No.715/1150 of 2007 on deposit of compensation of Rs.9,000/- per month.

3. The premises in question are admeasuring 800 sq. ft. situated in New Marine Lines, Mumbai. It is common knowledge that it is a prime commercial area in the city of Mumbai. The Petitioner had placed on record the report of the valuer wherein it was estimated that the property will fetch at least Rs.60,000/- per month. This has been brushed aside by the Appellate Bench that it is not a Government approved valuer. Without considering any other material, the Appellate Bench has straightaway granted Rs.9,000/- per month. The Appellate bench has relied upon the decision of the Apex Court in the case of ¹*Atma Ram Properties (P) Ltd. V/s. Federal Motors (P) Ltd.* to effect that 'common knowledge of human affairs' and 'events gained from judicial experience' would be relevant criterias. Unfortunately, while fixing the compensation at Rs.9,000/- per month for such a prime commercial property, these factors seems to be lacking from the impugned order. Though fixing of compensation cannot be accurate, adjudication must reflect application of mind. It is, therefore, necessary to set aside the impugned order passed to the compensation is fixed at Rs.9,000/- per month. The Appellate Bench will reconsider the aspect of fixing of suitable compensation. It will be open to the parties to place such

¹ (2005) 1 Supreme Court Cases 705

materials that may be available to determine the reasonable compensation. The writ petition is accordingly disposed off. The compensation will be arrived at by the Appellate Bench on its own merits. The Appellate Bench will decide the fixing of the compensation within a period of three months from the date the writ of this Court reaches it. Registry to communicate the order forthwith.

(N.M.Jamdar, J.)