

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10813 OF 2016

M/s Bothra Metal and Wire Industries ..Petitioner

Vs.

Mr. Krishnakant S/o Bootaram Bhalla
and Others ..Respondents

Mr. M. M. Vashi, Senior Counsel i/b Mr. Kunal Bhanage, for the
Petitioner.

Mr. Dakshesh Vyas i/b Mr. Nishant Subhash Vyas, Mr. Yagnesh
Mahesh Vyas, for Respondent Nos. 1 to 4.

CORAM :- B. P. COLABAWALLA, J.
DATE :- JULY 6, 2017.

ORAL JUDGMENT(PER B. P. COLABAWALLA,J.)

Rule. Respondents waive service. By consent, rule
made returnable forthwith and heard finally.

2 Leave to amend to annex the entire copy of the order
dated 29th January, 2015 which is impugned in this Petition is
granted. Amendment to be carried out forthwith.

3 This Writ Petition filed under Article 227 of the Constitution of India challenges the order dated 29th January, 2015 passed below Exhibit-7 in Appeal No.65 of 2013 under which the Appellate Bench of the Small Causes Court was pleased to stay the decree passed against the Petitioner on the condition that the Petitioner deposit a sum of Rs.8,94,520/- per month as compensation from 30th September, 2013 till the disposal of the Appeal.

4 Very few facts need to be noted. The Petitioner herein is the Original Defendant No.7 in T. E. & R. Suit No.110/126 of 2006 (for short “the Eviction Suit”). This Suit was filed by Respondent Nos.1 to 4 herein (Plaintiffs before the Small Causes Court at Bombay) *inter alia* praying for a decree of possession in respect of a plot of land bearing CTS No.275, Survey No.85, Hissa No.9, Survey No.86, Hissa No.1 to 5, Kurla-2 Village Churchyard, Premier Road, Kurla, Mumbai- 400 070 admeasuring approximately 3578.08 sq.mts. (hereinafter referred to as the “Suit Premises”). It is the case of the Petitioner that out of this entire area of 3578.08 sq.mts, the Petitioner is in occupation of only 1781.39 sq.mts.

5 Be that as it may, Respondent Nos. 1 to 4 herein, as the owners and lessors of the Suit premises, filed the Eviction Suit *inter alia* praying for an order and decree of possession against the Petitioner and other Co-Defendants before the Small Causes Court at Bombay. In this Suit, a decree of eviction came to be passed on 30th September, 2013 against the Petitioner as well as the other Co-Defendants. The Petitioner being aggrieved by this judgment and order dated 30th September, 2013 preferred an Appeal before the Appellate Bench of the Small Causes Court being Appeal No.65 of 2013. In this Appeal, the Petitioner preferred an application for stay (Exhibit-7) of the operation and execution of the order dated 30th September, 2013 pending the hearing and final disposal of the said Appeal. It is this application that was heard by the Appellate Bench of the Small Causes Court and thereafter the impugned order was passed wherein a stay was granted of the Judgment and Decree dated 30th September, 2013 on the condition that the Petitioner deposit jointly and severally a sum of Rs. 8,94,520/- as compensation, from 30th September, 2013 till the decision of the Appeal. Being aggrieved by this order, the Petitioner is before me assailing the order passed by the Appellate Bench of the Small Causes Court dated 29th January,

2015 in my extra ordinary, equitable and discretionary jurisdiction under Article 227 of the Constitution of India.

6 In this factual backdrop, Mr. Vashi, the learned Senior Counsel appearing on behalf of the Petitioner, submitted that the compensation fixed of Rs. 8,94,520/- was in relation to the entire property (3578.08 sq.mts.) whereas admittedly the Petitioner was in occupation of only 1781.39 sq.mts. This being the case, the Appellate Authority could not have directed the Petitioner to deposit the entire amount of Rs.8,94,520/- but at the highest could have directed the Petitioner to deposit a proportionate amount considering the area in their occupation.

7 Over and above this, Mr. Vashi submitted that the compensation fixed for this entire property is anyway excessive, fanciful and punitive and therefore my interference was called for under Article 227 of the Constitution of India. Mr. Vashi submitted that the Appellate Authority, whilst coming to the compensation figure of Rs. 8,94,520/- has taken into consideration wholly irrelevant material whilst ignoring the relevant material produced by the Petitioner. For all these reasons, Mr. Vashi submitted that this Writ Petition be allowed and the impugned

order be quashed and set aside.

8 On the other hand, Mr. Vyas, the learned counsel appearing on behalf of Respondent Nos.1 to 4 (Original Plaintiffs) submitted that there was no merit in the contentions advanced by Mr. Vashi. He submitted that the impugned order takes into account all the material produced whilst coming to the conclusion that the compensation that ought to be fixed is Rs.8,94,520/- (which works out to approximately Rs.250/- per sq.mts.). He, however, conceded that since the Petitioner is in occupation of an area of approximately 1781.39 sq.mts., they be directed to pay monthly compensation only in relation to the area in their occupation and not for the entire property of 3578.08 sq.mts. As far as the compensation being excessive is concerned, Mr Vyas brought to my attention a decision of this Court in the case of **Pankaj R. Raval v/s Krishnakant s/o Bootaram Bhalla and Others in Writ Petition No.4327 of 2015 decided on 28th July, 2015.** Mr. Vyas submitted that the Petitioner in Writ Petition No.4327 of 2015 was Defendant No.10 in the Eviction Suit filed by Respondent Nos.1 to 4 herein. After hearing the Petitioner in Writ Petition No.4327 of 2015, this Court *inter alia*

directed that the stay of the eviction decree against the Petitioner therein who was occupying an area of approximately 1705.77 sq.mts. would be subject to the Petitioner depositing before the Appeal Court compensation @ Rs. 200/- per sq.mts. per month on/before the 5th day of each month, as reasonable compensation for the use and occupation of the premises that were under Defendant No.10's occupation, namely, 1705 sq.mts. This compensation was to be paid from the date of the eviction decree dated 30th September, 2013 till the decision in the Appeal. Mr. Vyas submitted that a similar order can be passed in the present Petition considering that the Petitioner herein was Defendant No.7 in the said Suit and the subject matter of the said Suit as well as the present Petition is the same property, as was the subject matter in Writ Petition No.4327 of 2015.

9 I have heard the learned counsel for the parties at length and have perused the papers and proceedings in the Writ Petition. I have also given my careful consideration to the impugned order dated 29th January, 2015. On the first point canvassed by Mr. Vashi that the Petitioner cannot be saddled to pay compensation in relation to the entire property (3578.08 sq.mts.), I find the submission is well founded. Admittedly, out of

the entire property, only 1781.39 sq.mts., is in occupation of the Petitioner herein. He, therefore, cannot be saddled to pay compensation for the entire property admeasuring 3578.08 sq.mts. The compensation that would therefore be payable by the Petitioner would only be in relation to the extent of the property that is in his possession, namely, 1781.39 sq.mts.

10 Having said that, I shall now deal with the contentions of Mr. Vashi that the compensation awarded by the Appeal Court @ Rs. 250/- per sq.mts., is highly excessive. In this respect, I do not find any merit in the aforesaid contention. The Appeal Court has given detailed reasons from paragraphs 22 onwards. The Appeal Court has recorded that the Petitioner herein has also relied upon a deed of conveyance dated 24th December, 2010 whereas Respondent Nos.1 to 4 herein relied upon the report of Chartered Architect Mr. Hitendra Gangawar which report opined that the market rent for the entire property, namely 3578.08 sq.mts would be Rs.17,81,884/- per month calculated at Rs. 498/- per sq.mts. This report of Mr. Gangawar was the one that was taken into consideration. In fact, I find that the material produced by the Petitioner to submit that the rent payable in respect of the portion of the property which is in occupation of the Petitioner would be

only Rs. 25,474/- as wholly inadequate. The only material produced, which according to me, is no material at all is as stated by the Petitioner in paragraph 11 of the rejoinder affidavit filed before the Appellate Court and which reads as under:-

“11.I say that as per the above instance cited by me the current market rate will be as follows:

- a) Plot area 1632 sq.mt. (1350.90+281.10)
- b) Agreement Value; Rs.70,00,000/-
- c) Rate per sq.mtr.;Rs.4290.00
- d) Rent at the rate 4% per annum;Rs.171.60
- e) Rent per month/sq.mt:Rs.14.30
- f) Total rent of suit premise (structures) will be Rs.25474.02”

11 On perusal of this paragraph, it is clear that the Petitioner has produced no evidence of any expert to establish it's case that the fair market compensation for the area in the Petitioner's occupation would be only Rs.25,474.02 per month. Even applying common sense, this figure seems to be wholly ridiculous. It is absurd to even suggest that 1781.39 sq.mts. (which approximately translates to 17800 sq.ft.) in an area like Kurla in the city of Mumbai and which are commercial premises, would fetch only Rs. 25,474.02 per month. I, therefore, find that the Appellate Court rightly did not give any credence to this value at all.

12 Having said that, in Writ Petition No.4327 of 2015, for this very same property, this Court reduced the compensation payable from Rs. 250/- sq.mts as ordered by the Appellate Court to Rs. 200/- sq.mts. Considering that the property in question in Writ Petition No.4327 of 2015 is the very same property that is the subject matter of this Petition, I find that it would be in the interest of justice and fair to all parties, if the compensation is fixed at Rs. 200/- per sq.mts. Hence, considering the totality of the facts of the case, I pass the following order:-

- (i) The impugned order insofar as it concerns the Petitioner and Petitioner alone is modified.
- (ii) The impugned judgment and decree dated 30th September, 2013 shall be stayed against the Petitioner to the extent of the area occupied by it, namely, 1781.39 sq.mts, subject to the Petitioner depositing before the Appeal Court compensation @ Rs. 200/- per sq.mts. per month on/before 5th day of each month.
- (iii) This compensation shall be paid from the date of the eviction decree dated 30th September, 2013 till the decision in the

Appeal.

(iv) The Petitioner is at liberty to deposit the arrears of compensation *qua* portion of the suit property which is in his occupation (1781.39 sq.mts.) either in lump sum or in three equal monthly installments starting from today (6th July, 2017). If the aforesaid compensation is paid as directed above, the same shall be invested in a Nationalized Bank in a recurring deposit for one year and thereafter for similar period of one year each subject to any further orders that the Appellate Bench of the Small Causes Court may pass in that behalf.

(v) It is made clear that if the arrears of compensation are not deposited latest by 6th October, 2017, the stay shall stand automatically vacated and Respondent Nos.1 to 4 herein will be entitled to execute the decree against the Petitioner in relation to the portion of the Suit premises that are in use and occupation of the Petitioner.

13 Rule is made absolute in the aforesaid terms. However, in the facts and circumstances of the case, there shall be

no order as to costs.

14 Needless to clarify that Respondent Nos.1 to 4 (Original Plaintiffs) are at liberty to execute the decree against all other Defendants who have either not challenged the decree or who having challenged it, have not complied with any of the conditions of stay granted in their favour.

(B. P. COLABAWALLA, J.)