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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1113 OF 2017

Surendra Gopal Kamath

...Petitioner.

VS

Chhabildas Dalichand Bahyani

...Respondent.

.....

Mr Tejas Hilage i/b Mr Pandit Kasar for the Petitioner.

Mr P.G.Lad a/w Ms Sayli Apte for the Respondent.

.....

**CORAM : B. P. COLABAWALLA, J.
JULY 11, 2017.**

P.C. :

This Writ Petition has been filed challenging the order dated 14th October, 2016 passed in Appeal No.14 of 2012. This order was passed by the Appellate Bench of the Small Causes Court at Mumbai directing the Petitioner to pay a monthly compensation of Rs.15,000/- as a condition of stay of the impugned Judgment and Decree from 13th December, 2011 till the final disposal of the appeal.

2 The learned advocate appearing for the Petitioner submits that the Petitioner had produced a Valuation Report

before the Appellate Bench which clearly showed that the Fair Market Compensation for the suit premises in question was of Rs.4366/- per month. In contrast, the compensation fixed by the Appellate Authority of Rs.15,000/- was rather excessive, considering that these premises were in a Chawl and in an area where poor people reside. He submits that the Appellate Authority had expressly rejected the Leave and License Agreements that were produced by the landlord. This being the case, there was no other material before the Appellate Authority to fix the compensation of Rs.15,000/- and the Appellate Authority ought to have relied upon the Valuation Report produced by the Petitioner and fixed the monthly compensation @ Rs.4366/-. For all the aforesaid reasons, the learned advocate submitted that my interference is called for in the impugned order under Article 227 of the Constitution of India.

3 On the other hand, Mr Lad, learned advocate appearing for the Respondent (the landlord) submitted that there was absolutely nothing wrong in the impugned order. He submitted that the Appellate Authority has considered all the facts before coming to a conclusion that it would be fair to fix the

monthly compensation at the rate of Rs.15,000/- p.m. from the date of the decree till the disposal of the appeal. He submitted that the Appellate Authority has given proper and cogent reasons for coming to the aforesaid findings which certainly does not suffer from any perversity and/or error apparent on the face of the record, requiring my interference under Article 227 of the Constitution of India.

4 I have heard the learned counsel for parties at length and also perused the papers and proceedings in the Writ Petition. I have also carefully gone through the impugned order dated 14th October, 2016. The premises in question i.e. Shop No.2 is situated in a building known as Warden Vakil Chawl No.2, located at 259/261 Ferguson Road, Lower Parel, Mumbai 400 013(for short "suit premises"). The area of the suit premises, undisputedly, is 310 sq. ft. It is also not in dispute before me that the Petitioner runs a restaurant in these premises called "**Anand Bhuvan Hindu Hotel**". These premises are road touch to Ferguson Road. It is also not in dispute that the corporate offices like India Bulls, Marathon, Big Bazaar, Phoenix House and Mahindra Tower are around the suit

premises. Looking to these undisputed facts, I think that the Lower Appellate Authority was fully justified in not relying upon the Valuation Report produced by the Petitioner. On perusing the Valuation Report of the Petitioner, I am unable to understand, on what basis the valuer has come to a figure of Rs.4,366/- per month as a Fair Market Compensation for the suit premises. Considering that these are commercial premises and are road touching in an area such as Lower Parel in the city of Mumbai, in my opinion, in the facts of this case, it would be absurd to suggest that the Fair Market Compensation for the suit premises would be only Rs.14 per square feet (which works out to Rs.4,366/- per month for 310 square feet). It is in these circumstances that the Appellate Authority, after taking into consideration the locality as well as the condition of the building and the surrounding circumstances, fixed the Fair Market Compensation of the suit premises of Rs.15,000/- per month and ordered the Petitioner to clear the arrears up to 31st November, 2016. I do not think that the order of the Appellate Authority suffers from any perversity and or error of law apparent on the face of the record requiring my interference. I do not think that the compensation fixed by the Lower Appellate Authority, can

by any stretch of the imagination, be termed as excessive, fanciful or punitive.

5 In view of the aforesaid discussion, I do not find any merit in this Writ Petition and is, accordingly, dismissed. There shall be no order as to costs.

6 All arrears of compensation, after deducting any amounts already paid under the ad-interim order passed by this Court on 31st January, 2017, shall be deposited by the Petitioner within a period of two months from today. Over and above, clearing the arrears, the Petitioner shall also continue to deposit the monthly compensation of Rs.15,000/- on the 15th day of each month till the disposal of the appeal.

7 Needless to clarify that if there is a default in the clearance of the arrears or in payment of the monthly compensation as directed above, the stay granted by the Appellate Court shall stand automatically vacated and the landlord shall be entitled to execute the decree of eviction, in accordance with law.

8 The Respondent landlord is permitted to withdraw the compensation deposited as well as that shall be deposited in the future, subject to filing a written undertaking before the Appellate Authority, that in the event the Petitioner herein succeeds in his appeal before the Appellate Authority, the landlord shall bring back the amount with such rate of interest as the Appellate Authority may decide.

(B. P. COLABAWALLA, J.)