

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 165 OF 2017

IN

CIVIL REVISION APPLICATION NO. 266 OF 2014

Smt Chandrabhaga Ramu Labade ..Applicant

IN THE MATTER BETWEEN

Shri Govind Krishna Chaughule ..Petitioner

Vs.

Smt Chandrabhaga Ramu Labade ..Respondent

Mr. Chintan Shah i/b Mr. Sandesh D. Patil,for the Applicant.

Mr.Mayuresh D. Modgi,for the Respondent.

CORAM :- B. P. COLABAWALLA, J.

DATE :- JUNE 16, 2017.

P. C.:

This Civil Application has been filed by the Respondent-Landlord seeking a direction from this Court to fix the interim compensation pending the hearing and final disposal of this Civil Revision Application. The Respondent-Landlord had filed a Suit against the Tenant-Applicant in the Civil Revision Application being Regular Civil Suit No.64 of 2001. This Suit was originally dismissed. Thereafter, the Landlord being aggrieved thereby approached the Court of the District Judge-8, Thane by

filing Civil Appeal No.115 of 2010. The Appeal Court by its decision dated 21st November, 2013 set aside the order of the Trial Court and decreed the Suit in favour of the Respondent-Landlord. It is aggrieved by this order that the Tenant approached this Court by filing the above Civil Revision Application.

2 This Civil Revision Application has already been admitted by this Court on 27th September, 2016. This order further recorded that whilst considering the confirmation of the ad-interim order, this Court will fix interim compensation. Now, the Respondent-Landlord has filed the present Civil Application for fixing the interim compensation.

3 The learned counsel appearing on behalf of the Respondent-Landlord has brought to my attention the leave and licence agreement of similar premises and for the same locality dated 3rd November, 2016. The learned counsel pointed out that the licence fees payable under this agreement for similar premises was Rs. 6,000/- per month. He also relied upon another agreement which is at Exhibit-B page 14 of the Civil Application but has fairly stated that, this was in relation to commercial premises and therefore the same ought to be ignored.

4 On the other hand, the learned counsel appearing on behalf of the Tenant submitted that the leave and licence agreement on which reliance has been placed by the Respondent-Landlord is of an area of approximately 600 sq.ft. whereas the Suit premises are only of 120 sq.ft. He submits that, this information was received by the Tenant after the Tenant made enquiries with the Landlord of the said premises who has in fact also given an affidavit dated 11th April, 2017 and which is annexed at Exhibit-C to the reply filed by the Tenant. He, therefore, submitted that even if this leave and licence agreement were to be taken into consideration for the purposes of interim compensation, the interim compensation cannot be fixed at more than Rs. 1200 per month. Over and above this, the Tenant has also produced certain photographs allegedly of the Suit premises which show that the Suit premises are in a dilapidated condition in comparison to the premises which forms the subject matter of the leave and licence agreement relied upon by the Respondent-Landlord.

5 I have gone through the papers and proceedings in the Civil Application as well as the leave and licence agreement relied

upon by the Respondent-Landlord. On going through the said leave licence agreement, I find that the area of the premises which was the subject matter of the agreement does not seem to find any place in the said agreement. The Tenant has specifically pleaded in his affidavit that these premises were ad-measuring 600 sq.ft. and an affidavit of the Landlord of those premises has also been produced on record. In comparison the suit premises admittedly are only 120 sq.ft. This being the position, even if I were to take the fair market compensation as set out in the leave and licence agreement dated 3rd November, 2016, considering that the Suit premises are only 120 sq.ft., the fair interim compensation in the facts and circumstances of the present case would be Rs.1200/- per month.

6 In these circumstances, it is ordered that there will be interim stay of the execution of the decree passed against the Tenant on the following conditions:-

(a):-The arrears of interim compensation @Rs.1200/- per month from the period December 2013 to 30th September, 2017 shall be deposited in this Court within a period of three months from today.

(b):-For the months from October 2017 onwards, the Tenant shall

continue to deposit the sum of Rs.1200/- p.m. in this Court on/before 15th of each month.

(c):- If single default is committed, the interim stay granted by this order shall stand vacated forth with without further reference to this Court.

(d):-The Respondent-Landlord is allowed to withdraw the amount of interim compensation that is deposited in this Court only on him filing a Written Undertaking in this Court that if he fails in Civil Revision Application he will bring back the amount withdrawn by him.

(e):-It is clarified that over and above this interim compensation, that will have to be deposited by the Tenant, he shall also continue to pay the rent of Rs. 45/- per month which arrears also, if any, shall be paid on/before 30th September, 2017 and shall thereafter continue to pay the said rent on the 15th of each month without any default.

7 The Civil Application is disposed of in the aforesaid terms.

(B. P. COLABAWALLA, J.)