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

WRIT PETITION NO. 2286 OF 2014

Indu Nissan Oxa Chemical Industries Ltd. ... Petitioner.

V/s.

Indo Nippon Chemical Company Ltd. ... Respondent.

Ms. Neena Bharwani for the Petitioner.

Ms. Ranjana Parikh for the Respondent.

Coram : N.M. Jamdar, J.

Date : 22 March, 2017.

Oral Order :-

By this Petition, the Petitioner has challenged the order passed by the Appellate Bench of Small Causes Court, Mumbai below Exhibit 7 in Appeal No. 46 of 2013, dated 11 December 2013, granting stay to the execution of the judgment and decree dated 8 May 2013 on a condition that the Petitioner deposits interim compensation at the rate of Rs.2,00,000/- per month from May 2013 to December 2013 and other consequential directions.

2. The suit premises are situated on the 6th floor of a building situated at New Marine Lines, Mumbai. The premises admeasure 1700 sq.ft. carpet area and are commercial premises. As observed by the Appellate Bench, the locality is a prestigious commercial locality in the city of Mumbai. The Respondent – Plaintiff had placed on record a report of the valuer stating that the prevailing market rate would be Rs.4,06,300/- per month. The Petitioner placed on record a report of the valuer, who calculated the standard rent of the premises and stated that it would be Rs.61,078.05 per month.

3. The Apex Court in the case of *Atma Ram Properties (P) Ltd. v/s. Federal Motors (P) Ltd.*¹ has laid down that the Appellate Court is empowered to fix compensation, keeping in mind the market rate and other criterias while granting stay to the execution of the decree at the behest of a tenant whose tenancy stands determined. In view of the law laid down by the Apex Court, the compensation cannot be only the standard rent of the suit premises. The Petitioner did not place any other material than the report of the valuer who calculated the standard rent and therefore, the Appellate Bench had to go by the valuer's report submitted by the Respondent – Plaintiff.

¹ (2005) 1 SCC 705

4. Perusal of the impugned order shows that the Appellate Bench has taken note of the fact that the premises are located in a prime commercial premises. The argument is that the lift facility is not advanced but it was noted that suit premises is on the 6th floor and the lift facility is available till 5th floor. The Appellate Bench took note of various facts and fixed the compensation at the rate of Rs.2,00,000/- i.e. the half of the market value. It is not possible to exercise an appellate jurisdiction over the fixation of compensation by the Appellate Bench. Under the power of superintendence, interference is possible if the order is perverse or results in failure of justice. In the present case neither grounds are made out and the compensation fixed is reasonable.

5. The learned Counsel for the Petitioner submitted that the Petitioner – Company was declared as a Sick company at the time of passing of the decree and therefore, this ground ought to be taken into consideration. The learned Counsel for the Respondent has pointed out that this ground has not been urged during the trial neither the ground is taken in appeal memo before the Appellate Bench neither it was urged when the compensation was fixed. The learned Counsel for the Respondent has also pointed out that all that has been placed on record is the Reference of the years 2002 and 2005 to the Board for Industrial and Financial Reconstruction (B.I.F.R.) and nothing is placed regarding the current position,

neither any order passed declaring the Petitioner as a Sick company. The Petition is pending since the year 2014 and is adjourned from time to time. The Petitioner had ample opportunities to place on record the latest position, which the Petitioner has avoided to do.

6. It is pointed out by the learned Counsel for the Respondents that even during the trial the Petitioner had not deposited the arrears and the defence of the Petitioner was struck off. In a Writ Petition filed by the Petitioner, indulgence was shown to the Petitioner by extending time to deposit by a conditional order and it is thereupon that the Petitioner deposited the arrears. It therefore appears that the Petitioner is in habit of making defaults and avoiding payment. In these circumstances, no interference is warranted. The Writ Petition is accordingly rejected.

(N.M. Jamdar, J.)