IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7739 OF 2015

Bansadevi Widow of
Rajnarayan Bacchan Singh
(Deceased) and ors. .. Petitioners
vs.
Hemalata Widow of
Damji Kunverji Bharani and ors. .. Respondents

Mr. P.G. Lad i/b Mr. S.M. Bandkar for the Petitioners.
Ms Rubia Taneja a/w. Ms Shama Taneja for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 09 AUGUST 2017.

P.C. :-

1] Heard Mr. Lad, learned counsel appearing for the petitioners and Ms. Rubia Taneja, learned counsel appearing for the respondents.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The petitioners challenge the condition regards deposit of compensation at the rate of Rs.25000/- per month in the order dated 7th January 2015 made by the Appellate Bench of the Small Causes Court at the time of granting interim relief in favour of the petitioners in the matter of restraint upon execution of eviction decree made against the petitioners.

4] Mr. Lad, learned counsel for the petitioners, submits that the petitioners had placed on record a valuation report, in terms of which, reasonable compensation could have at the highest been determined at Rs.4000/- per month. Mr. Lad submits that from the description in the valuation report, which has nowhere been disputed by the respondents, it is apparent that the suit premises itself is of a semi permanent nature. He points out that the structure has external brick masonry covered with plaster, but the roof is covered with a A.C. Sheet and supported only by a wooden member. He points out that the structure is almost 35 years old having a partition wall with rough Shahabad tile flooring. He points out that the structure is effected by road line earmark by the BMC. He submits that the valuation report submitted on behalf of the petitioner is based upon the Stamp Duty Ready Reckoner and the valuer has adopted the correct principles in matters of valuation. Mr.Lad, without prejudice, submits that even if the element of depreciation is modified to some extent, the reasonable compensation in a matter of this nature can never exceed Rs.15000/- per month. Mr. Lad submits that some of the petitioners are widows and their payment capacity is also a relevant factor, which has unfortunately been ignored by the Appellate Bench. Mr. Lad Points out that this Court, by means of an ad-interim order, had in fact scaled down the compensation at the rate of Rs.15000/-. The petitioners have, without any default, deposited such amount in the Trial Court. Mr. Lad submits that the valuation report submitted on behalf of the respondents-landlords completely fails to take into consideration the Ready Reckoner rates, the type of construction, the age of construction and other relevant considerations. Mr. Lad submits that the instances referred to, in valuation report submitted by the landlord cannot be regarded as comparable instances. From all these reasons, Mr. Lad submits that the condition imposed in the impugned order is required to be modified.

5] Ms Rubia Taneja, learned counsel for the respondent-landlords, submits that the valuation report submitted on behalf of the petitioners has been rightly rejected by the Appellate Bench. She points out that the valuation report submitted on behalf of the tenants makes reference to premises in the very same building and in the building hardly 500 meters away from the suit premises. She points out that the suit premises are located in a commercial area and are utilised for commercial purposes. She submits that on the basis of valuation report submitted by the landlords the reasonable compensation should have been determined at least Rs.30,000/- per month. She point out that this Court, in its order dated 6th June 2017 in Civil Revision Application No. 98 of 2015, at the interim stage, has determined compensation at the rate of Rs.30,000/- per month in respect of premises in the neighbourhood of the suit premises. For all these reasons, Ms Taneja submits that there is no case made out for exercise of extra ordinary jurisdiction and this petition may be dismissed.

6] Ms Taneja also attempted to make submissions to the effect that the petitioners have acquired possession of the suit premises contrary to the restraint orders and further, the petitioners have also encroached upon setback areas and therefore, the true and correct area of the suit premises is much in excess of 174 sq. ft. However, since these matters are extraneous for the present purpose, Ms Taneja was requested not to persist with such submissions and she has graciously consented to do so.

7] The rival contentions now fall for my determination.

8] The determination of reasonable compensation is required to be undertaken in terms of the decisions of Apex Court in ***Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited***[1] and ***State of Maharashtra & anr. Vs. M/s. Super Max International Pvt. Ltd. & Ors.***[2]. Although, the tenant, who has suffered an eviction decree and who intends to continue in possession of the suit premises despite eviction decree, on the basis of interim order of the Court is required to ordinarily deposit the market rent, the determination of such market rent has to be on a reasonable basis. This means that the payment capacity of the tenant as well as the actual condition of the tenanted premises are not factors, which are alien or irrelevant for the purposes of such determination. The determination should not be too excessive so as to render the tenants' right of appeal illusory. In many cases, if the tenant, is required to relinquish the possession of the suit premises pending the appeal, it is possible such tenants' right to pursue the appeal in an effective manner may itself be rendered illusory. At the same time necessary regard is also required to be had to the plight of the landlords who had already succeeded in establishing before the Trial Court that continuance of the tenants in the suit premises is no

1 2005(1) SCC 705
2 2009(5)ALL MR 1001

longer proper and that such tenants are required to be evicted from the suit premises. The balance has to be stuck keeping in mind these two parameters.

9] In the present case, the determination of reasonable compensation at the rate of Rs.4000/- as proposed by the tenants valuer has rightly been rejected by the Appellant Bench. The valuer, obviously, has laid great emphasis on the aspect of depreciation, without having due regard to the circumstance that these are commercial premises, being used by the petitioners for the purpose of commerce. These are premises, which are having road frontage and there is even an allegation that the setback area is being utilised for the purposes of commerce.

10] At the same time, even the valuation report submitted on behalf of the landlords cannot be accepted in its entirety. The valuation report ignores the semi permanent nature of the construction, which has been highlighted in the valuer's report submitted by the tenants' valuer. There is no clear material on record to appreciate whether the instances referred to in the landlords' valuation report are comparable instances insofar as description of the structure is concerned. No doubt, one of the instances refers to premises in the same building and another in a building which is about 500 meters away.

11] Upon cumulative consideration of the material on record as well as other circumstances highlighted by Mr. Lad in support of the petitioners, the reasonable compensation in the present case is required to be determined at Rs.20,000/- per month in place of Rs.25,000/- per month. There are obvious advantages in relation to the suit premises and further the petitioners are undertaking commerce through the suit premises. The deduction is mainly on account of nature of the structure.

12] Accordingly, the impugned order is modified. The reasonable compensation amount is determined at Rs.20,000/- per month instead of Rs.25000/- per month. The time for deposit of any arrears in terms of the present order is extended by three months. However, from 1st September 2017 onward, the petitioners to start depositing the compensation at the rate of Rs.20,000/- per month.

13] The petitioners shall be entitled to adjustments of the amounts deposited by them in pursuance of the ad-interim order granted in this petition. Further, in case, the petitioners desire to avail the benefit of interim order dated 7th January 2015, the petitioners to file usual undertaking as directed by the Appellate Bench in clause (iii) of the said order within a period of two weeks from today.

14] Rule is made partly absolute to the aforesaid extent. There shall however, be no order as to costs.

(M. S. SONAK, J.)