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

WRIT PETITION NO. 4017 OF 2015

Ranjan Motiram Jayakar & Ors. ... Petitioners.

V/s.

M/s. Hakoba Ltd. And Ors. ... Respondents.

Mr. P.K. Dhakephalkar, Senior Advocate a/w. Rajendra Jain i/b. M/s.
Thakore Jariwala & Assoc. for the Petitioners.

Mr. Nitin Dalvi for Respondents 1 to 4.

CORAM : N.M. Jamdar, J.

23 February, 2017.

Oral Order :-

By order dated 12 April 2016, notice was issued and the Writ Petition was kept for final disposal. Accordingly, taken up for final disposal.

2. By order dated 23 December 2014, impugned in this Petition, the Appellate Bench of Small Causes Court, Mumbai has granted stay to the execution and operation of the decree dated 20

June 2003 on a condition that the Appellant, Respondents herein should deposit compensation at the rate of Rs.50,000/- per month with effect from January 2015.

3. Heard the learned Counsel for the parties.

4. The portion in occupation of the Respondents – Appellant consists of basement of 1,000 sq.ft., ground floor of 1,024 sq. ft. and the mezzanine floor of 591 sq.ft. being used for commercial purpose at C.P. Tank, Mumbai. This locality is one of the prime commercial locality in city of Mumbai. The Appellate Bench has referred to a leave and licence agreement from the vicinity from which the market rent indicated at Rs.5,72,685/- per month. After referring to this agreement and certain submissions made by the Appellant, which are kept open at the time of hearing of the Appeal, the Appellate Bench straight away fixed the compensation at Rs.50,000/- per month stating that the property will not fetch the market rate of Rs.50,000/- per month in the present days. Though the exercise of fixing compensation has a margin of error but the process cannot arbitrary. There is absolutely no reason why the leave and licence agreement which indicated the price at Rs.5,72,685/- was completely discarded. What the Appellate Bench meant by 'present days' is also not understood.

5. The learned Counsel for the Respondents sought to argue that the order dated 23 December 2014 cannot be interfered with since the Respondent had filed a Revision Application No. 44 of 2014 which was dismissed by the learned Single Judge (K.R. Shriram, J.) on 3 February 2015. He submitted that therefore, the order has been confirmed. This submission cannot be accepted and the Petition was summarily dismissed. The grievance of the Petitioner regarding the impugned order was not before the Court. The learned Single Judge has not referred to the aspect of reasonableness of the compensation nor has recorded any finding thereupon. The learned Counsel for the Respondents then submitted that the Respondents is not entitled in law to pay the compensation at all. Since the Application in respect of the fixing of compensation is being remanded to the Appellate Bench, it is open to the parties to advance such contentions as may be available in law and on facts as regarding fixing of compensation.

6. In these circumstances, for complete lack of reasoning on the part of the Appellate Bench and the fact that the premises are situated in prime locality and Rs.50,000/- per month by no stretch of imagination can be considered as anywhere near the market value of this premises, the impugned order to the effect that it fixes the compensation at Rs.50,000/- is set aside. The Appellate Bench will

hear both sides, call upon the parties to present material in support of their case and fix reasonable compensation. The Appellate Bench will carry out the exercise of fixing of compensation within period of three months from the date the writ of this Court reaches it. Writ Petition is disposed of accordingly.

(N.M. Jamdar, J.)