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

CIVIL APPLICATION NO. 341 OF 2015

in

CIVIL REVN. APPLICATION NO. 110 OF 2011

Jaswant Tuljashankar Trivedi & Ors. ... Applicants.

In the matter between :

Mr. Mahendra Manilal Pandya. ... Applicant.

V/s.

Jaswant Tuljashankar Trivedi & Ors. ... Respondents.

with

CIVIL APPLICATION NO. 68 OF 2017

in

CIVIL REVN. APPLICATION NO. 110 OF 2011

Mr. Mahendra Manilal Pandya. ... Applicant.

V/s.

Jaswantbhai Tuljashankar Trivedi & Ors. ... Respondents.

Mr. Tushar Gujar i/b. Solicis Lex for the Applicant in CAC 341/15.
Mr. Uday Warunjikar for the Orig. Applicant in CRA 110/11 and
CAC 68/17.

CORAM : N.M. Jamdar, J.

23 February, 2017.

P.C. :-

By this application, the Applicant has sought a direction to the Respondents to pay an amount of Rs.32,33,634/- towards the mesne profit for the period between the year 2001 to 2014 and to pay an amount of Rs.32,719/- per month from November 2014.

2. The Applicant in the Civil Application is the landlord - Respondent in the Revision Application No. 110 of 2011, filed by the Respondent – tenant. A decree of eviction has been passed by the learned Small Causes Court Judge against the Respondent - tenant. The Rule was issued in the Revision Application on 14 February 2012. Interim relief was granted staying the execution of the decree. Liberty was granted to the Applicant to file an appropriate application for compensation, pursuant to which, the present application is filed for fixing compensation pending hearing of the Revision Application.

3. By order dated 12 August 2015, by way of an ad-hoc arrangement, compensation at the rate of Rs.15,000/- per month was fixed. Thereafter, by order dated 6 October 2015, same was reduced to Rs.10,000/- and the registry was directed to appoint a Valuer from the Panel of Approved Valuers, in view of the controversy between

the parties. The Registry appointed Shetgiri & Associates as valuers, who have submitted their valuation report on 10 December 2015.

4. The landlord have sought for compensation at the rate of Rs.32,719/- *per month*. The tenant in response had placed valuers' report which stated that the compensation will be somewhere around Rs.33,855/- *per year*. I have gone through the report of the valuer of the tenants. This valuation of Rs.33,855/- *per year* of a residential flat situated at Ghatkopar, which is decent residence locality, is absurd to say the least.

5. The premises are approximately 462 sq.ft. which are residential premises. The court appointed valuer has placed his report on record who has indicated an amount of Rs.17,745.95 as an appropriate figure. The court appointed valuer has taken various aspects into consideration and including the instances from the nearby locality.

6. Both the learned Counsel for the parties accepting the position that their respective valuation cannot be accepted in toto have left it to the Court to fix appropriate compensation. There is no impediment in proceeding on the basis of the report of the court appointed valuer. While fixing the compensation, as per law laid down by the Apex Court in the *Atma Ram Properties (P) Ltd. v/s.*

*Federal Motors (P) Ltd.*¹ and *State of Maharashtra v/s. Super Max International Pvt. Ltd.*², the ability of the tenant to pay the compensation cannot be completely excluded from the consideration. The fixation of compensation and direction of payment of arrears cannot be *in terroram*, resulting in execution of the decree for a genuine inability to pay. The learned Counsel for the Respondent has pointed out that the Respondent has to support a large family. The learned Counsel for the Applicant on the other hand has pointed out the location of the suit premises which are in good locality in Mumbai. The Court valuer has determined the compensation at Rs.17,745.95. Considering this valuation and the financial condition of the Respondent, I am of the opinion that the compensation should be fixed as Rs.15,000/- per month. As far as the date from which the arrears are to be paid, the learned Counsel for the Applicant has pressed that they should be paid from the date of the admission of the Revision Application. However, when the Revision Application was admitted on 14 February 2012, liberty was given to the Applicant to take out an application, which liberty was not availed of by the Applicant for period of atleast three years as the application was filed in February 2015. Therefore, I am inclined to grant the arrears from February 2015 and not from 14 February 2012.

1 2005 (1) SCC 705

2 AIR 2010 SC 722

7. As far as the prayers regarding mesne profit is concerned, same is kept open to be considered at the time of hearing of the Revision Application.

8. The Civil Application is disposed of by fixing the compensation at the rate of Rs.15,000/- per month. The Applicant will deposit the compensation at the rate of Rs.15,000/- by tenth of each month in the Registry of this Court. As far as the arrears from February 2015, till date, at the rate of Rs.15,000/- are concerned, the Applicant will clear the same within period of one year from today. The Civil Application is accordingly disposed of.

9. Civil Application No. 68 of 2017 is taken out for tenantable repairs by the tenant. No orders on the Civil Application at present. Same is adjourned to 21 April 2017 to be considered only after the tenant deposits substantial amount of arrears, as directed in Civil Application No. 341 of 2015 above. The relief prayed for in this Civil Application will be considered on its own merits.

(N.M. Jamdar, J.)