

JPP

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

WRIT PETITION NO. 3182 OF 2017

Patrick D'souza.

... Petitioner.

V/s.

Mrs. Anita D'souza and Ors.

... Respondents.

with

WRIT PETITION NO. 2975 OF 2017

Mrs. Anita D'souza and Ors.

... Petitioners.

V/s.

Patrick D'souza and Ors.

... Respondents.

Mr. Arun Palekar for the Petitioners in WP 2975/17 and for Respondents 1 & 2 in WP 3182/17.

Mr. Suraj Shah a/w. Ms. Prabha Rathod for Respondent 1 in WP 2975/17 and for the Petitioner in WP 3182/17.

Coram : N.M. Jamdar, J.

Date : 22 March, 2017.

Oral Order :-

These two Petitions arise from the same impugned orders, have been argued together and are disposed of by this

common order. Writ Petition No. 3182 of 2017 is filed by the Original Plaintiff. Writ Petition No. 2975 of 2017 is filed by the Original Defendant through a Power of Attorney.

2. The Plaintiff – landlord filed a suit bearing No. R.A.E. Suit No. 112/308 of 1996 for seeking possession of the suit premises from the Defendant – tenant on the ground of non-user, unlawful sub-letting, bonafide requirement and permanent alterations of the suit premises. The suit premises is a flat situated on the 2nd floor, Ceasor Road, Amboli, Andheri (West), Mumbai. The suit premises admeasure around 652 sq.ft. The Trial Court by judgment and decree dated 26 August 2016 directed the Defendants to hand over vacant and peaceful possession of the suit property to the Plaintiff. An Appeal bearing No. 49 of 2016 was filed by the Defendant through a Power of Attorney. The Appeal was admitted on 25 November 2016 and stay of the execution of decree sought for by the Defendants. The Plaintiff sought fixation of suitable compensation. The Appellate Bench on 8 February 2017 by the impugned order stayed the execution and implementation of the judgment and decree of the Trial Court on a condition that the Defendants deposit an amount of Rs.45,000/- per month from 26 August 2016. The Defendants were restrained by order of injunction not to create third party rights. This impugned order has been challenged by both the Plaintiffs and Defendants by their

respective Petitions. The Plaintiffs are aggrieved by not granting compensation at the rate of Rs.91,815/- per month as sought for and grant of stay. The Defendants are aggrieved by fixation of compensation at the rate of Rs.45,000/-.

3. I have heard the learned Counsel for the parties. The suit premises are situated at Andheri (West) which is a descent locality in the city. The Plaintiffs had placed on record report of the valuer relying on the Ready Reckoner stating that monthly compensation for the suit premises would be around Rs.91,815/-. The Defendants did not place any material such as valuation report or sale instance to show that the compensation arrived at by the valuer of the Plaintiff was incorrect. The Appellate Court took note of the age of the building and that the compensation should not be oppressive and fixed the same at Rs.45,000/-. The Defendant making no effort to produce any material, and the Appellate Bench fixing compensation half of the amount claimed through valuation report by the Plaintiff, cannot make any grievance. The challenge to the fixation of compensation at the behest of the Defendant is without merit. The approach of the Appellate Court therefore cannot be faulted with.

4. As far as the case of the Plaintiff that the amount being enhanced is concerned, though the valuer's report states that the

monthly compensation based on Ready Reckoner would be Rs.91,815/-, the condition of the build and the age cannot be ignored. The undisputed photographs have been shown by the learned Counsel for the Defendants indicate that the condition of the structure is not very sound. The Appellate Bench rightly took note of this contention and did not accept full Ready Reckoner value. Therefore, I do not find that any case is made out for interference in the fixation of compensation by the Appellate Court, at the instance of both the parties.

5. The learned Counsel for the Plaintiff submitted that the Defendants are in arrears of taxes, maintenance charges, etc. This has been contested by the Defendants. It is open to the Plaintiffs to take out an application in the pending appeal for recovery of maintenance, taxes and such other charges, which will be considered on its own merits.

6. The learned Counsel for the Plaintiffs made a serious grievance that not only the original tenant but subsequent occupants have also migrated out of India and the suit is pursued only by a Power of Attorney. He submitted that nobody is staying at the suit premises. Prima-facie, looking to the photographs which show the condition of the flat, indicate that the premises do not seem to be in use. It will be open to the Plaintiffs to take out appropriate

application for appointment of a Receiver or such other relief in the pending appeal, which will be considered on its own merits.

7. The learned Counsel for the Plaintiff submitted that the Power of Attorney holder may take a stand that the order of injunction does not bind the Power of Attorney holder and create third party rights and therefore, he may be directed to file a personal affidavit. Since the Power of Attorney is pursuing the cause of the Defendants, the order of injunction equally binds the Power of Attorney holder and therefore, this apprehension is not warranted.

8. No further orders are required to be passed in both these Writ Petitions which are accordingly disposed of. The arrears shall be deposited within period of four weeks from today.

(N.M. Jamdar, J.)