

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 8211 OF 2017**

Mrs. Girija Raju Poojary

..Petitioner

Vs.

Mr. Joseph Percival Franklin Fonseca & Ors

..Respondents

Mr. Rajesh G. Singh i/b Legal Liaisons for the Petitioner

Mr. Kunal Bhanage for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 6th APRIL, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 3-2-2017 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order, the interim compensation was fixed by the Appellate Bench of the Small Causes Court at Rs.50,000/- per month w.e.f. 1-3-2017 till the disposal of the Appeal and the said payment was directed to be made on or before 10th day of each succeeding month.

2 The Petitioner herein is in Appeal against the decree of eviction passed by the Learned Judge of the Small Causes Court dated 8-2-2016. The said decree has been passed in RAE & R Suit No.98/223 of 1999 filed by the Respondent No.1. The suit premises are admeasuring 1400 sq.ft. wherein a Restaurant and Bar is being run. The decree has been passed inter alia on the

ground of subletting and bonafide requirement of the landlord. The Petitioner in the Appeal filed by her filed the instant application Exhibit 6 for stay of the decree. It is at the time of consideration of the said application for stay that the condition of payment of Rs.50,000/- as interim compensation came to be fixed from the date of the decree. It seems that the Respondent No.1 had claimed Rs.5 lakhs as interim compensation which claim was based on a valuation report of the valuers M/s S.G. Samant and Associates dated 1-9-2016. The said valuation report concludes that the compensation of Rs.5,66,080/- over and above the recovery of the property taxes, land revenue, electricity charges, water charges etc, would be the compensation that a landlord can be expected to receive in respect of the premises in question. At the hearing of the said application Exhibit 6, the Petitioner herein who is the tenant did not produce any contra material but has now sought to rely upon the report of N. B. Dharmadhikari, Architect, Engineer, Government Approved Valuer. The said report concludes by stating that the monthly compensation would be Rs.28,000/- per month for the suit premises.

3 The Learned Counsel appearing for the Petitioner Mr. Singh would contend that though the report of N. B. Dharmadhikari, Architect, Engineer, Government Approved Valuer, was not produced before the Appellate bench of the Small Causes Court when it adjudicated upon the issue of fixing of interim compensation, this court can consider the said report and fix the

interim compensation accordingly. The Learned Counsel would contend that the premises being such that the amount of Rs.50,000/- fixed as interim compensation by the Appellate Bench of the Small Causes Court is excessive.

4 Per contra the Learned Counsel Mr. Bhanage appearing for the Respondent No.1 landlord would point out to this court that the premises are situated on the S. V. Road which is one of the main arterial roads in Mumbai. The Learned Counsel would contend that the entire area is a commercial area and therefore the compensation fixed at Rs.50,000/- is in fact not realistic.

5 Having heard the Learned Counsel for the parties, in my view, the interim compensation fixed at Rs.50,000/- per month cannot be said to be excessive or exorbitant. It is required to be noted that the suit premises are admeasuring 1400 sq.ft. wherein a Restaurant and Bar is being run. The suit premises are situated in Khar Mumbai and taking into consideration the location as pointed out by the Learned Counsel appearing for the Respondent No.1, the premises are having a prime location as they are situated on the road coming from Khar station, on the S.V. Road which is one of the main arterial roads in so far as the western suburbs in Mumbai are concerned.

6 In my view, therefore, the impugned order fixing the interim compensation @ Rs.50,000/- per month cannot be faulted with. No case for

interference is therefore made out. The Writ Petition is accordingly dismissed.

7 The Learned Counsel appearing for the Petitioner on instructions of the constituted attorney of the Petitioner Mrs. Dayavathi Vasu Kotian who is personally present in court stated that the arrears are to the tune of Rs.7 lakhs and therefore reasonable time may be granted to the Petitioner to deposit the same. The said arrears to be cleared in two installments of Rs.3.50 lakhs each, the first installment to be paid on or before 30-5-2017 and the second installment to be paid on or before 30-6-2017.

[R.M.SAVANT, J]