

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6261 OF 2017

Audyogik Nidhi Paisa Fund & Ors. .. Petitioners
vs.
Anant Vasudeo Limaye & Ors. .. Respondents

Mr. Ketan V. Joshi i/b. Ergo Juris for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 28 AUGUST 2017

P.C :

- 1] Not on board. In view of urgency, taken on production board.
- 2] The challenge in this petition is to the condition imposed in the order dated 26th August 2016 requiring the petitioner to deposit compensation at the rate of Rs.80,000/- per month as a condition for stay to the execution of the eviction decree made against the petitioner.
- 3] Mr. Joshi, learned counsel for the petitioner submits that the impugned order is vitiated by procedural irregularity. In this case, no valuation reports were called for and no opportunity was given to the parties to place on record relevant material for the purposes of determination of reasonable compensation in terms of the decisions of the Hon'ble Supreme Court in ***Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited¹*** and ***State of***

1. 2005 (1) SCC 705

Maharashtra & Anr. Vs. M/s Super Max International Pvt. Ltd. & Ors.² and of this Court in ***Chandrakant Dhanu vs. Sharmila Kapur***³

4] Mr. Joshi submits that the petitioner is an old institution having made a significant contribution to the cultural history of Pune. He submits that the suit premises are located in a building which is over 100 years old and even this aspect has not been taken into consideration by the appeal court in determining the compensation. He also points out that the petitioner has been not doing too well in its business venture and has accumulated losses. For all these reasons, Mr. Joshi submits that the impugned condition may be interfered with.

5] Having considered the submissions made by Mr. Joshi and perused the material on record, I am satisfied that there is no jurisdictional error in the impugned order. Neither can it be said that this is a case of any unreasonable exercise of jurisdiction. Nothing prevented the petitioner from placing on record the material, including, valuation reports for the purposes of determining the reasonable compensation amount. The landlord in this case, placed on record a leave and licence agreement in respect of comparable premises. In so far as the age of the building in which

2. 2009(5) ALL MR 1001.

3. 2009 2 All MR 73

the suit premises is located, the appeal court, has made sufficient allowance for the same. The compensation in terms of the instances produced by the landlord came to Rs.1,10,000/- per month, whereas, in the impugned order, the petitioner, has been directed to deposit a sum of Rs.80,000/- per month. This is not a case of any deprivation of opportunity but rather this is a case where the petitioner, chose not to place any material on record to assist the Court in determining the reasonable compensation. There is no material on record to establish that the petitioner is not in a position to afford payment of this amount. Besides, there is no order permitting the respondent to withdraw this amount and consequently, the amounts if deposited, will have to be invested. There is already a direction to this effect. Taking into consideration, all these factors, there is no case made out to interfere with the impugned order.

6] Mr. Joshi, learned counsel for the petitioner submits that some further time may be granted for deposit of arrears of compensation in terms of the impugned order. He further requests that the hearing in the appeal itself be expedited.

7] At the request of the learned counsel for the petitioner, time for deposit of arrears of compensation in terms of the impugned order is extended till 31st October 2017. The petitioner shall be

entitled to credit for the amounts deposited by the petitioner in this Court. In fact, the amount deposited in this Court along with accrued interest is directed to be transferred to the appeal court, which shall thereafter order the investment of the same. In case, the arrears of compensation are not deposited by 31st October 2017 or if there are any two consecutive defaults or three non consecutive defaults in deposit of the compensation amount, as directed in the impugned order, the petitioner shall not be entitled to the benefit of the interim relief, which interim relief shall stand vacated without any further reference to the appeal court.

8] Further, at the request of the petitioner and also taking into consideration the circumstance that one of the grounds for eviction was *bona fide* requirement, the hearing of the appeal before the appeal court is expedited.

9] This petition is disposed of in the aforesaid terms.

10] All concerned to act on basis of authenticated copy of the order.

(M. S. SONAK, J.)