

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

WRIT PETITION STAMP NO.10762 OF 2017

Sumit R Gupta : Petitioner/Org. Applicant.

versus

M/s Indian National Press

Bombay Limited and ors. : Respondents.

Mr. Tushar Bhavsar i/by Mr. V P Ambure for the Petitioner.

Mr. Javed Akhtar i/by Mr. Choudhary for the Respondents.

CORAM : R. M. SAVANT, J.

DATE : 04th MAY 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 20/08/2016 passed by the Appellate Bench of the Small Causes Court directing compensation to be deposited @ Rs.50,000/- per month from the date in terms of the earlier directions. It also granted facility to the Applicants to deposit the amount jointly and severally with the other Defendants in the suit.

2 The Petitioner herein is the original Appellant No.3 in Appeal No.33 of 2009 which has been filed against the decree passed in RAE Suit No.5143 of 1978 which decree is dated 22/03/2007. The Petitioner in the Appeal filed against the decree filed an Application (Exhibit 4) for stay of the decree. The said Application was allowed by the Appellate Bench of the Small Causes Court by imposing the condition that the Petitioner i.e. the Appellant

No.3 shall deposit monthly compensation at Rs.40,000/- in Court from the date of decree till final disposal of the Appeal. Whilst fixing the amount, the Appellate Bench of the Small Causes Court adverted to the claim made by the Decree Holder of Rs.97,800/- per month which amount was arrived at on the basis of the rates mentioned in the ready reckoner of the State of Maharashtra for the year 2007-2008 for the immovable properties located in Mumbai. The Appellate Bench of the Small Causes Court observed that the amount of Rs.97,800/- claimed by the Respondent No.1 Decree Holder was exorbitant and therefore deemed it appropriate to fix an amount of Rs.40,000/- as interim compensation pending Appeal.

3 At this stage, it is required to be noted that another set of Defendants had filed an Appeal being Appeal No.349 of 2007 against the same decree. In the said Appeal also an Application for interim stay came to be filed by the Appellants in the said Appeal. The said Application was numbered as Exhibit 4. The Appellate Bench of the Small Causes Court granted stay to the decree on the condition that the Appellants to deposit an amount of Rs.50,000/- in the said Court from the date of the decree pending the Appeal. The reasons for fixation of the interim compensation at Rs.50,000/- per month find a place in the said order dated 14/07/2008 passed by the Appellate Bench of the Small Causes Court. The Appellants in the said Appeal carried the matter to this Court by way of Writ Petition No.6146 of 2008. A learned Single

Judge of this Court did not deem it fit to interfere with the said order dated 14/07/2008 fixing the interim compensation at Rs.50,000/- per month and accordingly dismissed the said Writ Petition No.6146 of 2008. It seems that the Appellants in the said Appeal have not complied with the said order dated 14/07/2008 and in view thereof the interim stay of the decree does not enure to the benefit of the said Appellants.

4 As indicated herein above, the Petitioner herein is the Defendant No.1(c)(iii) in the said RAE Suit No.5143 of 1978. Probably having regard to the fact that the filing of the Appeal being No.33 of 2007 by the other Defendants would not protect the rights of the Petitioner, the Petitioner also filed an Appeal challenging the decree. As indicated herein above the Appellate Bench of the Small Causes Court has granted interim stay on the condition that the Petitioner deposits interim compensation at the rate of Rs.40,000/- per month. The Petitioner sought review of the said order said order dated 21/01/2009 passed by the Appellate Bench of the Small Causes Court. The review application was founded on the fact that the order passed by the Appellate Bench of the Small Causes Court did not take into consideration the relevant consideration whilst fixing the interim compensation at Rs.40,000/- per month. The Appellate Bench of the Small Causes Court considered the said Review Application and has accordingly allowed the same, however, has increased the interim compensation from Rs.40,000/- to

Rs.50,000/- per month. The Appellate Bench of the Small Causes Court has recorded the reasons as to why the said amount was required to be enhanced and especially the reason that in the companion Appeal, the said amount fixed as interim compensation was not being deposited.

5 The principal contention of the learned counsel appearing on behalf of the Petitioner is that in the review jurisdiction the Appellate Bench of the Small Causes Court could not have enhanced the compensation from Rs.40,000/- to Rs.50,000/- per month. The learned counsel for the Petitioner would also seek to draw this Court's attention to the various factors which according to him were missed out by the Appellate Bench of the Small Causes Court whilst fixing the compensation both at Rs.40,000/- per month as also whilst enhancing the compensation to Rs.50,000/- per month.

6 In my view, it is not possible to accept the contentions urged by the learned counsel for the Petitioner. It is required to be noted that in the companion Appeal filed by the other set of Defendants the compensation was fixed at Rs.50,000/- per month which order was confirmed by a learned Single Judge of this Court whilst dismissing Writ Petition No.6146 of 2008 filed by the said Defendants. Having regard to the said fact, the Appellate Bench of the Small Causes Court deemed it appropriate to enhance the interim compensation from Rs.40,000/- to Rs.50,000/- per month so that there is

consistency and uniformity in the fixation of the interim compensation in respect of the same premises. The principles that have to be applied whilst fixing the interim compensation have been enunciated by the Apex Court in the judgment reported in (2005) 1 SCC 705 in matter of Atma Ram Properties (P) Ltd. v/s Federal Motors (P) Ltd. and thereafter judgment reported in (2009) 9 SCC 772 in the matter of State of Maharashtra and another v/s. Super Max International Private Limited and others. In my view, having regard to the principles which have been enunciated by the Apex Court in the said judgments, no fault can be found with the order passed by the Appellate Bench of the Small Causes Court in enhancing the interim compensation from Rs.40,000/- to Rs.50,000/- per month. It is also required to be noted that the premises are situated in Fort area of South Mumbai and admeasure 669 sq.ft. (carpet area). The Petitioner has his registered office in the said suit premises. Having regard to the rental which is prevailing in the market for the similar premises situated in South Mumbai especially the Fort area, the compensation fixed at Rs.50,000/- per month cannot be said to be excessive, exorbitant or fanciful. In that view of the matter, this Court does not deem it fit to exercise its writ jurisdiction. The above Writ Petition is accordingly dismissed.

7 The interim compensation at Rs.50,000/- per month would be payable from September 2016, the Petitioner however would be liable to deposit the interim compensation at Rs.40,000/- per month from the date of

decree till August 2016. The Petitioner would have to deposit the monthly compensation on or before 10th of each month. It is made clear that if there is a default in the deposit of the upto date compensation, or any two consecutive defaults in the deposit of the monthly compensation, then the interim order would stand vacated. In so far as the arrears, which would arise on account of the difference as the Petitioner was directed by way of ad-interim order to pay compensation at Rs.20,000/- per month, are concerned, the Petitioner is granted 12 (twelve) weeks time from date to deposit the same.

[R.M.SAVANT, J]