

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

WRIT PETITION NO.7994 OF 2017

Kiranraj Sheshmal Rathod

..Petitioner

Vs.

Shriharsh Laxman Joshi

..Respondent

Mr.Nitin P. Deshpande for the Petitioner.

Mr. N.C. Walimbe for the Respondent.

CORAM: M.S. SONAK, J.

DATE: 25th SEPTEMBER 2017

P.C. :

. Rule. Mr.Walimbe, learned Counsel for the Respondent waives service. By consent, the Rule is made returnable forthwith. The Writ Petition is taken up for hearing and final disposal, by consent and on the request of learned counsel.

2. The challenge in this petition is to the condition in order dated 18/11/2016 in terms of which, the Petitioner- Tenant is required to deposit compensation at the rate of Rs.6,000/- p.m. as a condition for interim relief.

3. Mr.Deshpande, Learned counsel for the Petitioner submits that this determination is quite excessive. The Petitioner has material to establish that even as late as 2017, the Respondent-landlord, in respect of the very same building in which the premises are located, has been getting rent/fees at the rate of Rs.13,000/- p.m. with respect to the premises admeasuring 500 sq. ft. Learned counsel points out that the premises in the present case are 150 sq. ft. and on the first floor.

4. Mr. Walimbe, Learned counsel has tendered an affidavit of the Respondent-landlord. He submits that the determination of Rs.6,000/- is infact low and the same should be in excess of Rs.6,000/- . He has annexed to the affidavit, Leave and License agreement, which, according to him is a comparable instance.

5. Upon due consideration of the rival contentions and perusal of the impugned order, it is seen that, there was hardly any material before the learned Appeal Court at the stage of determination of compensation at the rate of Rs.6,000/- p.m. Now, when both the parties claim to be possessed of the material in the form of Leave and License agreement etc., it is only appropriate that the determination in the impugned order dated 18/11/2016 is treated as an ad-interim determination.

6. The parties are granted liberty to file an affidavit and produce material before the Appeal Court within a period of 2 weeks from today. Based upon the same, the Appeal Court, to determine the quantum of reasonable compensation by adverting to the material so produced by the parties and applying the principle laid down by the Supreme Court in ***Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd.*** The Appeal Court, need not be influenced by the determination in the order dated 18/11/2016, which is to be regarded as an ad-interim determination.

7. The impugned order is modified in the aforesaid terms. The Petition is made partly absolute to the aforesaid extent with no order as to cost.

8. Mr. Deshpande, learned counsel states that the Petitioner, without prejudice, has deposited compensation in terms of the impugned

order up to July 2017 and will continue to do so until the Appeal Court, determine the compensation in pursuance of this order. The Appeal Court is directed to determine the compensation within a period of 2 months from today. The amount deposited by the Petitioner shall be liable to adjustment, depending upon determination in pursuance of this remand.

9. The Petitioner is also directed to pay contractual rents @ Rs.290/- p.m. in the Appeal Court. Arrears to be deposited/paid within a period of 2 months from today.

10. The petition is disposed of in the aforesaid terms.

11. All concerned to act on the basis of an authenticated copy.

12. It is clarified that the stay to the execution of the eviction decree stands revived and the Petitioner shall abide by further orders to be made by the Appeal Court in the pending appeal.

(M. S. SONAK, J.)