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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CIVIL APPELLATE JURISDICTION***

***CIVIL WRIT PETITION NO.7967 OF 2015***

***AND***

***CIVIL WRIT PETITION NO.7791 OF 2015***

Joy Frozen Foods Pvt. Ltd.

..Petitioner.

V/s.

Vikas Madangopal Tulsiani & Ors.

..Respondents.

Mr.Lalit Jain with Ms.Sneha Agrawal for the Petitioner in both petitions.

Mr.Kunl Bhanage for Respondent Nos.1 to 3 in both petitions.

***CORAM : N.M.Jamdar, J.***

***DATED : 9 February, 2017***

**ORAL ORDER**

Heard the learned counsel for the parties. Considering the narrow controversy involved, the petition is taken up for disposal forthwith, by consent of the parties.

2. This is the second time that the Petitioner has filed a writ petition concerning the compensation during the hearing of the appeal filed by him. The Petitioner had filed a suit No. 28/39 of 2006, which was decreed. Thereafter, Appeal No.7/2013 was filed

by the Respondent in which an application for stay of the judgment and decree was taken out by the Respondent. The Appellate Bench of the Small Causes Court by an order dated 13 June, 2013 had granted stay to the execution and operation of the decree on the condition that the Respondent will deposit a monetary compensation, which could be withdrawn by the Petitioner. This order was challenged by the Petitioner on the ground that the compensation fixed was not adequate. By an order dated 14 February, 2014, the learned Single Judge disposed of the writ petition and permitted the Petitioner to place on record material in respect of his claim for fixation of compensation. Thereafter, the Petitioner filed a copy of the leave and licence agreement dated 23 December, 2010, which according to the Petitioner, was in the vicinity of the suit premises. The Appellate Bench by the impugned order dated 23 June, 2015 rejected this application. The Appellate Bench held that the leave and licence agreement is not from the nearby locality.

3. I have heard the learned counsel for the parties and also perused the leave and licence agreement sought to be relied upon by the Petitioner. This agreement pertains to the premises at Plot No.67, Government Industrial Estate. Kandivili (West), Mumbai - 400 067. The suit premises also indicates that they are situated at Kandivili (West) and bears the same Pin Code number. The suit premises are also in the industrial estate. In the application by which

the leave and licence agreement was placed on record, it was asserted by the Petitioner that the agreement relates to the premises in the vicinity. This assertion in the reply has not been specifically denied. Therefore, while discarding the agreement, the Appellate Bench ought to have made some scrutiny of the document. It is rejected only on the ground that it is not in the vicinity. There does not appear to be any specific denial in the reply.

4. Discarding this document altogether is, therefore, perverse. However, though the piece of evidence placed on record by the Petitioner is of relevance, it does not *ipso facto* result in accepting the amount that has been specified in the leave and licence agreement to be applied to the facts of the present case. Before doing so, the Appellate Bench will have to apply parameters as indicated in the case of <sup>1</sup>*Atma Ram Properties (P) Ltd. V/s. Federal Motors (P) Ltd.* and the decision in the case of <sup>2</sup>*Niyas Ahmad Khan V/s. Mahmood Rahmat Ullah Khan & Anr.*. This inquiry has to be carried out by the Appellate bench and I do not intend to carry out the same in the writ petition.

4. In the circumstances, the order passed by the Appellate Bench on 23 June, 2015 so far as it rejects the claim of the Petitioner based on the leave and licence agreement dated 23 December, 2010, stands quashed and set aside. Liberty to the Petitioner to re-agitate

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1 (2005) 1 Supreme Court Cases 705

2 (2008) 7 Supreme Court Cases 539

the issued based on the leave and licence agreement dated 23 December, 2010 which the Appellate Bench will decide the same after hearing both the sides. All contentions of the parties in respect of fixing the compensation are kept open. The writ petition is accordingly disposed off.

*(N.M.Jamdar, J.)*