<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4507 OF 2017

Hindustan Dorr Oliver Limited ..Petitioner

Vs.

Smt Archana R. Dhanwatay and Others ..Respondents

Mr. M. Behl a/w Ms. Amruta Savant i/b Sonal Doshi and Co, for the Petitioner .

Mr. G. S. Godbole a/w Mr. H. N. Thakore, Ms. Jyoti Ghag, Mr. Rajendra Jain i/b Thakore Jariwala and Associates, for Respondent Nos. 1 and 2.

Mr. Kapil Moye i/b S. R. Page, for Respondent Nos.3 to 5.

CORAM :- **B. P. COLABAWALLA, J.**
DATE :- **JULY 11, 2017.**

<u>**P. C.:**</u>

By this Writ Petition filed under Article 227 of the Constitution of India the Petitioner challenges the order dated 19th December, 2015 passed by the Appellate Bench of the Small Causes Court. By the impugned order, the Appellate Bench granted a stay of the impugned judgment and decree of the Trial Court dated 1st April, 2013 on the condition that the Petitioner deposit compensation in respect of the suit premises @ Rs.5,00,000/- per month from the date of judgment and decree (i.e.1st April, 2013) up to 30th November, 2015, on or before 31st January, 2016. Thereafter, the Petitioner was directed to deposit compensation @ Rs.5,00,000/- per month from December 2015 onwards till the disposal of the Appeal, on/before the 10th day of each succeeding month.

2 Very few facts need to be noted to dispose of this Writ Petition. The Petitioner is a company incorporated in India under the provisions of the Companies Act, 1956. The Petitioner claims to be a tenant of the office premises admeasuring 2508 sq.feet. or thereabout being situated on the 5th floor of the South Wing of the building known as the "The International" (for short "The Suit Premises"). This building is situated at 16 Maharshi Karve Road, Churchgate, Mumbai 400 020.

3 It is the case of the Respondents-Landlords that the Petitioner having a share capital of more than Rs. 1 Crore do not get protection under the provisions of the Maharashtra Rent Control Act, 1999. It is in this light that the Landlords terminated

monthly tenancy of the Petitioner by its termination notice dated 1st February, 2006 and thereafter filed T. E. & R. Suit No.171/198 of 2007 for recovery of possession of the suit premises. This suit was finally decreed in favour of the Respondents-Landlords on 1st April, 2013. Being aggrieved by this judgment and decree, the Petitioner approached the Appellate Bench of the Small Causes Court at Mumbai by filing Appeal No.2 of 2014. In the said Appeal, the Petitioner also made an application for stay of the execution of the impugned judgment and decree of the Trial Court dated 1st April, 2013. It is in this application that the impugned order has been passed wherein a conditional order of stay has been granted to the Petitioner on it depositing monthly compensation of Rs. 5,00,000/- per month.

4 In this factual backdrop, Mr. Behl, the learned counsel appearing on behalf of the Petitioner, submitted that the compensation fixed by the Appellate Bench was highly excessive, fanciful and punitive. He submitted that the fair market compensation for the suit premises is approximately Rs.3,20,000/-. In this regard he brought to my attention a valuation report dated 4th June, 2016 (page 278 of the paper

book) and submitted that the valuer had taken into consideration that this building is over 75 years old, the locality is congested due to the narrow width of the lane and there are inadequate parking facilities. After taking everything into consideration, the valuer had come to the conclusion that considering the size of the suit premises, age of the building, the property description and the prevailing / comparable rental rates in the vicinity, the fair market compensation would be in the range of Rs. 108/- to Rs.127/- per sq.ft., was the submission of the learned counsel. He submitted that looking to this figure, the compensation fixed by the Appellate Bench certainly called for interference in my limited jurisdiction under Article 227 of the Constitution of India as the figure fixed by the Appellate Bench was wholly perverse.

5 On the other hand, Mr. Godbole, the learned counsel appearing on behalf of Respondent Nos.1 and 2 submitted that there was nothing wrong in the order passed by the Appellate Bench. Mr. Godbole submitted that before the Appellate Bench, the Petitioner did not produce any material whatsoever to show what would be the fair market compensation for the suit premises. The valuation report that the Petitioner now seeks to rely upon

has been produced for the first time in this Court as is clear from the date of the report which is 4th June, 2016, when in fact the impugned order is dated 19th December, 2015. Mr. Godbole submitted that in these circumstances the impugned order cannot be faulted on the basis of a report that was never placed before it in the first place.

6 Independently, Mr. Godbole submitted that in any event, for an identical area in the same building, a leave and licence agreement was produced by the Respondents-Landlords before the Appellate Bench of the Small Causes Court. He submitted that this leave and licence agreement clearly indicates that the fair market compensation would be Rs. 6,03,750/-. This leave and licence agreement was valid from 1st January, 2012 to 31st December, 2016. Despite this, and taking other things into consideration, the Appellate Bench has fixed the fair market compensation for the suit premises at Rs. 5,00,000/-. In these circumstances, Mr. Godbole submitted that it certainly cannot be said that the impugned order suffers from any perversity and/or an error apparent on the face of the record requiring my interference under Article 227 of the Constitution of India. Mr.

Moye, the learned counsel appearing on behalf of Respondent Nos.3 to 5 also supported the submissions made by Mr. Godbole and prayed that the Writ Petition be dismissed.

7 I have heard the learned counsel for the parties at length and have perused the papers and proceedings in the Writ Petition. I find considerable force in the arguments canvassed by Mr. Godbole. It is not in dispute before me that before the Appellate Bench, the Petitioner herein did not produce any material whatsoever to indicate as to what would be the fair market compensation in relation to the suit premises. On the other hand, the Landlords had produced a leave and licence agreement of a similar premises in the same building which indicated that the fair market compensation would be in the range of approximately Rs. 6,03,000/- per month. On the basis of the material that was before the Appellate Authority, I do not think that the Appellate Authority had in any way misdirected itself in fixing the compensation for the suit premises at Rs. 5,00,000/- per month.

8 Despite this, Mr. Behl, the learned counsel appearing

on behalf of the Petitioner, submitted that the Petitioner has now produced a valuation report dated 4th June, 2016 which clearly indicates that the fair market compensation for the suit premises should be approximately Rs. 3,20,000/- and that in my equitable jurisdiction, I ought to take this valuation into consideration. I am unable to accept this submission for more than one reason. Firstly, in my jurisdiction under Article 227 of the Constitution of India I have to see whether the order of the lower appellate authority suffers from either perversity or an error of law apparent on the face of the record. This Court under Article 227 of the Constitution of India is not an appellate Court. It would be highly unfair to set aside the order of the lower appellate authority on the basis of material which is produced before me now, and which, even though the Petitioner had an opportunity, chose not to produce before the lower appellate authority. This being the case, I am not inclined to modify the order passed by the lower appellate authority merely on the basis of the valuation report that has been produced for the first time before me in this Writ Petition. Even otherwise, I find that there is already a transaction of leave and licence of similar premises in the very same building in which the suit premises are situate. The Licensee of those premises is Standard Chartered Securities (India) Limited which is a group concern of Standard Chartered Bank. There is not even an allegation before me that the leave and licence agreement entered into between said Standard Chartered Security (India) Limited and its Licensor, is not a genuine transaction.

9 Looking to all these facts, I am of the view that the compensation fixed by the lower appellate authority is certainly fair and reasonable and in any event cannot be termed as fanciful, excessive or punitive as submitted by Mr. Behl. For all the foregoing reasons, I find no merit in this Writ Petition. It is accordingly dismissed. However, there shall be no order as to costs.

10 At this stage, the learned counsel appearing on behalf of the Petitioner prays that six months time be granted to clear the arrears of compensation payable. In view of the aforesaid request, it is directed that the Petitioner shall clear all the arrears of compensation within a period of four months from today.

11 Over and above the arrears of compensation, the

Petitioner shall continue to pay the monthly compensation of Rs. 5,00,000/- on the 10th day of each month till the final disposal of the Appeal.

12 Needless to clarify that if there is a default in either clearing the arrears of the compensation or in the payment of monthly compensation as directed above, the stay granted by the appellate authority shall stand automatically vacated and the Respondents-Landlords shall be entitled to execute the decree in accordance with law.

13 The parties to act on an ordinary copy of this order duly authenticated by the Sheristedar.

(B. P. COLABAWALLA, J.)