

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 20922 OF 2017

|                         |    |            |
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| Keshav Pandurang Iyare  | .. | Petitioner |
| vs.                     |    |            |
| Vishnu Tukaram Dukhande | .. | Respondent |

Mr. G. V. Pandya for Petitioner.  
Mr. Kunal Bhanage for Respondent.

**CORAM : M. S. SONAK, J.**  
**DATE: 22 AUGUST 2017**

**P.C :**

- 1] Not on board. In view of urgency, taken on production board.
- 2] The challenge in this petition is in regard to the condition of deposit of compensation at the rate of Rs.2,000/- per month in the order dated 3<sup>rd</sup> July 2017. The learned Trial Judge by the order dated 3<sup>rd</sup> July 2017 has in fact stayed execution of the eviction decree but granted such stay subject to the condition of deposit of Rs.2,000/- per month.
- 3] Learned counsel for the petitioner, relying upon the decision of the Hon'ble Supreme Court in ***Mohd. Amin & Ors. vs. Vakil Ahmad & Ors.***<sup>1</sup> has submitted that since in this case, the landlord had not prayed for any mesne profits, the Appeal Court, was not

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1 AIR 1952 SC 358

entitled to impose the impugned condition. The learned counsel for the petitioner also submits that the petitioner is a pensioner and this circumstance has also been ignored while determining the interim compensation at Rs.2,000/- per month.

4] Upon due consideration of the aforesaid submissions and upon perusal of the material on record, there is no case made out to interfere with the impugned order.

5] In this case, the Appeal Court, was really not concerned with the issue of mesne profits and was not determining or even awarding mesne profits. The direction for deposit is entirely consistent with the law laid down by the Hon'ble Supreme Court in the cases of ***Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited***<sup>2</sup>, and ***State of Maharashtra & Anr. Vs. M/s. Super Max International Pvt. Ltd. & Ors.***<sup>3</sup> Accordingly, there is no reason to interfere with the impugned order on the ground that it has failed to take into consideration the law laid down by the Hon'ble Court in *Atma Ram Properties (supra)* and *M/s. Super Max International (supra)*.

6] In this case, the landlord had produced an agreement, which reflected compensation at the rate of Rs.10,000/- per month. The

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2 2005(1) SCC 705

3 2009(5)ALL MR 1001

learned Appeal Judge, has in fact taken into consideration the position that the petitioner is a pensioner and further the position that the premises which were the subject matter of the agreement were not entirely comparable and determined compensation at the rate of only Rs.2,000/- per month. There is neither any jurisdictional error nor any unreasonability in the approach of the learned Trial Judge. Accordingly, this petition is dismissed. There shall be no order as to costs.

7] However, the time limit for deposit of the arrears / amounts in terms of the impugned order is extended by a period of three months from today.

8] It is made clear that in case of any default, the petitioner will not be entitled to the benefit of the interim order granted by the Appeal Court.

**(M. S. SONAK, J.)**