

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9764 OF 2017

Miss Shireen Dady Adenwalla	..	Petitioner
vs.		
Ms Yasmin Dinyar Ilavia	..	Respondent

Mr. Nilesh M. Wable for Petitioner.
Mr. V. A. Shastry for Respondent.

CORAM : M. S. SONAK, J.
DATE: 04 OCTOBER 2017

P.C :

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the condition for deposit of Rs.80,000/- towards compensation as pre-condition for stay granted by order dated 14th March 2017.

3] The appeal court, in this case, has almost entirely relied upon valuation report submitted by Sachin Purohit who had opined that the market rent in respect of the suit premises would be in the range of Rs.80,000/- per month. No doubt, the petitioner, had placed on record no material to assist the appeal court in determination of the reasonable compensation.

4] Mr. Wable, learned counsel for the petitioner however points out that the valuation report has taken into consideration as comparable instances Oxford Village Bungalow and Apartments at Orchid and Lilak Co-operative Housing Societies. He points out that the bungalow and the flats can hardly be regarded as comparable

instances, since the suit premises in the present case, are almost 100 years old and do not have any amenities comparable to such instances.

5] At the stage of issuance of notice in this petition, the petitioner had offered to retain area / structures admeasuring 216.18 sq. meters and surrender the possession of the balance area / structures, since the suit premises were said to admeasure around 1,200 sq. meters.

6] Mr. Shastry, learned counsel for the respondent points out that there is absolutely no jurisdictional error in the impugned order. He points out that the determination is based on the valuation report and the valuer, has himself taken into consideration the dissimilarities and provided for appropriate reduction. Mr. Shastry further points out that there is absolutely nothing *bona fide* in the valuation made by the petitioner because, the balance area which is now offered to be surrendered, are stables and servant quarter. There is already a litigation pending as regards the servant quarter between the petitioner and the person, who, according to Mr. Shastry has been illegally inducted in the servant's quarters.

7] Having heard the learned counsel for the parties and perused the material on record, though, there is some case made out to reduce the compensation amount, there is necessity to record that there was absolutely nothing *bona fide* in the valuation made by the petitioner for the surrender of area in excess of 216.18 sq. meters. From the description of the suit premises in the plaint, it is clear that the petitioner seeks to offer surrender of premises described at paragraph 1(c) and 1(d) of the plaint. Paragraph 1(c) makes reference to stables and paragraph 1(d) makes reference to

stables and servants quarters. In so far as premises described at paragraph 1(d) are concerned, learned counsel for the petitioner confirms that the petitioner has instituted proceedings for ejection of the servant. This means that the petitioner offered to surrender possession of premises, even though, the premises were not actually in possession of the petitioner. Accordingly, it is required to be noted that there is absolutely nothing *bona fide* in the offer made by the petitioner for surrender of premises in excess of 216.18 sq. meters.

8] The valuation report, almost entirely relies upon the valuation in respect of Oxford Village Bungalows and Apartments at Orchid and Lilak Co-operative Housing Societies. Even though, some adjustments have been indicated in the valuation report, it does appear that the compensation, ultimately determined in the valuation report is excessive.

9] Taking into consideration the age of the suit premises and the absence of the amenities as are bound to be available in the bungalow and the flats, the interests of justice will be met if the compensation amount is reduced from Rs.80,000/- to Rs.60,000/- per month. Accordingly, the impugned order is modified and the compensation amount is reduced to Rs.60,000/- per month. The rest of the conditions in the impugned order shall remain the same.

10] Further, considering the directions issued by the Hon'ble Supreme Court in the case of ***Hameed Kunju vs. Nazim***¹, the hearing of the appeal is expedited, since, eviction in this case has been ordered on the ground of *bona fide* requirement and non user of the suit premises. The appeal court to endeavour to dispose of

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the appeal itself in accordance with law and on its own merits within a period of one year from today.

11] Further, the petitioner is required to pay costs of Rs.25,000/- (Rupees Twenty Five Thousand) for having mislead this Court by making an offer which was far from *bona fide*. Such costs to be paid to the respondent within a period of four weeks from today.

12] Rule is disposed of in the aforesaid terms.

13] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka