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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10260 OF 2017

Dilipkumar Mohanlal Shah

..Petitioner.

V/s.

Anil Shriniwas Vaidya & Anr.

..Respondents.

Mr.Avinash B. Avhad for the Petitioner.

Mr.Amol D. Joshi for the Respondents.

CORAM: M.S. SONAK, J.

DATE : OCTOBER 10, 2017

P.C.:-

Not on board. Upon production, taken on production board.

2. After the matter was argued for some time, learned counsel for the parties agree that this petition can be disposed of by following agreed order :-

- (a) The Petitioner shall pay to the Respondent No.1 Anil Vaidya an amount of Rs.5,00,000/- (Rupees five lakhs) by demand draft on or before October 18, 2017;
- (b) The Petitioner shall further deposit an amount of Rs.10,00,000/- (Rupees Ten lakhs) before the Appeal Court on or before December 10, 2017;
- (c) On the basis that the Petitioner shall comply with the directions in (a) and (b), the impugned order dated August 4, 2017 is set aside;
- (d) Parties are granted liberty to place material before the Appeal Court so as to assist the Appeal Court in re-determining the amount of reasonable compensation. Such exercise to be completed by the parties latest by November 15, 2017.
- (e) The Appeal Court to thereafter re-determine the amount of compensation in terms of the law laid down by the Hon'ble Supreme Court in *Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited*¹ and *State of Maharashtra & Anr. Vs. M/s. Super Max International Pvt. Ltd. & Ors.*² after

1 2005(1) SCC 705

2 2009(5)ALL MR 1001

taking into consideration the material produced on record by both the parties;

- (f) If, for any reason, the Petitioner fails to pay Rs.5,00,000/- (Rupees five lakhs) to Respondent No.1 and fails to deposit Rs.10,00,000/- (Rupees ten lakhs) on or before December 10, 2017, the Appeal Court need not re-determine the amount of compensation. Besides, in such eventuality, this petition shall be deemed to have been dismissed and determination made by the Appeal Court in the impugned order shall stand;
- (g) In addition to the aforesaid, the Petitioner shall deposit arrears of rent at the rate of Rs.18,418/- p.m. before the Appeal Court latest by December 10, 2017. If any amount towards the arrears of rent has already been deposited by the Petitioner, the Petitioner shall be entitled for the credit of the same. The Petitioner agrees that Respondent No.1 shall withdraw the said amount without prejudice. Accordingly, the Appeal Court to permit withdrawal of the amount deposited towards arrears of rent and not the amount of Rs.10,00,000/- (Rupees ten lakhs), if deposited;

- (h) This Court has not examined the issue of reasonable compensation and, therefore, the Appeal Court to determine the amount of reasonable compensation as expeditiously as possible and in any event on or before January 15, 2018;
- (i) The order for eviction of the Petitioner is stayed upto December 18, 2017. If on October 18, 2017, Rs.5,00,000/- (Rupees five lakhs) is paid to Respondent No.1, the stay shall stand extended upto December 10, 2017. If the amount of Rs.10,00,000/- (Rupees ten lakhs) is deposited on or before December 10, 2017, then, the stay shall stand extended until further orders to be made by the Appeal Court;
- (j) The petition is disposed of in above terms.

All concerned to act upon an authenticated copy of this order.

(M.S. SONAK, J.)