

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7091 OF 2017

Ajit Jaywant Divekar .. Petitioner
vs.
Venkatesh Ganesh Gokhale (deceased)
Anand Venkatesh Gokhale & Anr. .. Respondents

Mr. S. N. Chandrachood for Petitioner.
Ms Sangeeta S. Vaidya for Respondents.

CORAM : M. S. SONAK, J.
DATE: 28 AUGUST 2017

P.C :

- 1] Not on board. In view of urgency, taken on production board.
- 2] Heard learned counsel for the parties.
- 3] The challenge in this petition is to the condition imposed in the order dated 10th August 2016 requiring the petitioner to pay compensation at the rate of Rs.32,000/- per month as a pre-condition for stay on the eviction decree.
- 4] Mr. Chandrachood, learned counsel for the petitioner submits that the respondent in respect of the premises in the same building had produced an agreement which indicates that the license fee in respect of the premises admeasuring about 200 sq. ft. was Rs.14,000/- per month. He submits that the suit premises in the

present case are about 350 sq. ft. In such circumstances, there was no justification for determining compensation at Rs.32,000/- per month. Mr. Chandrachud submits that such an enormous increase is contrary even to the law laid down by the Hon'ble Supreme Court in cases of ***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.

5] Mr. Chandrachud points out that in this case decree of eviction on the ground of *bona fide* requirement was declined by the trial court. Decree of eviction has been ordered on the ground of alleged non user. Mr. Chandrachud seeks leave to place on record an affidavit, in which it is clearly stated that the petitioner is in fact using the suit premises for doing business of interior decorations, furniture, paintings etc. and also has got staff which works in the office for the said purpose.

6] Ms Vaidya, learned counsel for the respondent landlord has defended the impugned order. She pointed out that the suit premises are on the ground floor facing Karve Road. In these circumstances, the compensation amount has been correctly fixed.

7] Having considered the rival contentions and perused the

1 2005 (1) SCC 705

2 2009 (5) All MR 1001

material on record, I am satisfied that there is no jurisdictional error in the leave and licence agreement which indicates compensation at the rate of Rs.14,000/- per month, in respect of the office premises which is located on the second floor of the same building in which the suit premises is located. The suit premises however admeasure 350 sq. ft. and are on the ground floor opening upon Karve Road.

8] The issue as to whether the decree of eviction on the ground of non user has been correctly made or not will no doubt be decided on merits by the appeal court. For that purpose, it may or may not be open to the appeal court to look into the affidavit now tendered claiming that the suit premises are being used for business purposes. However, if, the petitioner on oath now says that he is carrying on the business through the suit premises, then, there is nothing unreasonable in requiring the petitioner to deposit Rs.32,000/- per month as a condition for continuing in possession of the suit premises despite the eviction decree against him. This is neither a case of jurisdictional error nor a case of any unreasonable exercise of the jurisdiction in the matter. The determination is quite consistent with the principles set out in *Atma Ram Properties (Private) Limited* (supra) and *Super Max International Pvt. Ltd.* (supra).

9] Accordingly, this petition is dismissed. There shall be no order as to costs.

10] However, time limit to deposit the arrears of compensation is extended by a period of eight weeks from today. In case such amount is deposited, the same is ordered to be invested in a nationalised bank. Needless to add that, in case arrears of compensation are not deposited within eight weeks or there are any two consecutive defaults or three non consecutive defaults, the interim order granted by the appeal court shall stand vacated without further reference to the appeal court.

(M. S. SONAK, J.)

Chandka