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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELATE JURISDICTION

CIVIL WRIT PETITION NO.10885 OF 2016

Hasmukh Bhogilal Shah (since deceased)

through LR

..Petitioner.

V/s.

Chandrakant Babulal Shah & Ors.

..Respondents.

Mr.Rajeev Matkar for the Petitioner.

Mr.Rajesh Chheda with Ms.Preeti Limbchiya for the Respondents.

Coram : N.M.Jamdar, J.

Date : 23 March 2017

ORAL ORDER

As per the order dated 21 September 2016, the petition is taken up for final disposal.

2. The order impugned in this petition is passed by the Appellate Bench of the Small Causes Court, Mumbai below Exhibit-7 in Appeal No.460/2015 on 18 August, 2016. The Appellate Bench while granting stay to the execution of the Judgment and Decree dated 17 April 2015 in R.A.E. Suit No.1585/2321/2006 has directed

the Petitioners to deposit compensation at the rate of Rs.20,000/-.

3. The suit premises are situated at Liladhar Mansion, Building, Kika Street, Mumbai. The suit premises admeasures 319 sq. ft. The suit premises were let out to the Petitioners on rent of Rs.245.50. The suit was filed by the Respondents against the Petitioners on the ground of *bonafide* requirement and other grounds. The suit was decreed in favour of the Respondents by the learned Small Cause Court Judge on the ground of *bonafide* requirement by Judgment and Order dated 17 April, 2015. Thereafter appeal was filed in which the impugned order is passed.

4. While passing the impugned order and fixing the compensation, there is no detailed discussion by the Appellate Bench of the Small Cause Court. In view of this position, the matter needed to be remanded back to the Appellate Court. The learned counsel for the parties requested that they will place their respective figures before this Court or leave it to this Court to find a middle way for them. The parties have placed on record material in support of their contention. The learned counsel for the Respondent on instructions from his client states that monthly compensation can be around Rs.15,000/- while the learned counsel for the Petitioner, on instructions, states that the compensation be fixed at Rs.11,000/-.

5. The exercise of fixing the compensation has to be carried

out pursuant to the law laid down in ¹*Atma Ram Properties (P) Ltd. Vs Federal Motors (P) Ltd.* and ²*State of Maharashtra & Anr. v/s. M/s Super Max International Pvt. Ltd. & Ors. Vs. M/s R.M.Choksey & Co.* The principle laid down by the Apex Court is that if the tenancy stands determined and the tenant seeks stay from the Appellate Court, he must pay compensation which is arrived at by keeping in mind the factors such as the current market rate. At the same time, it has also been laid down by the Apex Court in the case of ³*Niyas Ahmad Khan V/s. Mahmood Rahmat Ullah Khan & Anr.* that fixation of compensation should not be such that it amounts to a penalty.

6. The building is located in a commercial area. However, it is pointed out that the premises are located in an old building. The Petitioner has filed an affidavit placing on record that his wife suffers from cancer and her treatment is going on. Though, the learned counsel for the Respondent, on instructions, has stated that an amount of Rs.15,000/- be fixed as compensation, in my opinion, considering the factors such as ailment of wife of the Petitioner, a latitude needs to be given to the Petitioner. Accordingly, in my opinion, the dispute can be resolved by fixing compensation at Rs.13,000/-.

7. The Petitioner has deposited some compensation at the

¹ 2005(1) SCC 705

² A.I.R. 2010 SC 722

³ (2008) 7 SCC 539

rate of Rs.20,000/- pursuant to the impugned order. The Petitioner will be entitled to adjustment of this amount. The Petitioner will deposit compensation at the rate of Rs.13,000/- before the tenth of every month. The Respondents have already been permitted to withdraw 50% of the interim compensation amount so deposited. It is open to the parties to make a request to the Appellate Bench for early disposal of the appeal which the Appellate Bench may consider as per its time schedule and workload. The writ petition is accordingly disposed of by modifying the impugned order dated 18 August, 2016 by substituting the figure of Rs.20,000/- to Rs.13,000/-. If the Petitioner is in arrears, the same shall be cleared within a period of one month from today.

(N.M.Jamdar, J.)