

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 327 OF 2017
IN
CIVIL REVISION APPLICATION NO. 483 OF 2011

Frick India Ltd. .. Applicant
vs.
Ion Exchange Enviro Farms Ltd. & Ors. .. Respondents

Mr. Yashpal Jain with Mr. Rushabh Thakkar i/b. Haresh Jagtiani & Associates for Applicant.

Mr. Satyam Vaishnav with Nupur Mukherjee i/b. M/s. N. N. Vaishnawa & Co. for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE: 25 SEPTEMBER 2017

P.C :

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

2] For the reasons set out in the civil application, the restoration can be allowed. However, restoration, will have to be subject to certain conditions. In the first place, the applicant, will have to pay costs to the respondents. It is well known that matters take a considerable time to reach the stage of final hearing. Once a particular date is missed, it is very difficult to accommodate the parties and to proceed with the final hearing of the matter. To that extent, learned counsel for the respondents, on basis of the affidavit of the respondents, is, justified, in opposing present application. The prejudice to the respondents, is therefore, required to be compensated in terms of costs.

3] Further, in this case, the applicant, is enjoying interim relief, without, depositing any reasonable compensation in terms of the

decision of the Hon'ble Apex Court in the cases of ***Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.***¹ and ***State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors.***²

4] Learned counsel for the applicant points out that this Court, by its order dated 11th July 2011 had permitted the respondents landlords to file application seeking compensation in terms of the aforesaid two judgments. However, such application was never taken out. Learned counsel for the respondents submits that since, the matter was to be heard finally, such application may not have been taken out. He however submits that if restoration is to be ordered, the least, that the applicant should be required is to deposit reasonable compensation, which, even otherwise, in terms of the law laid down by the Supreme Court, the applicant is required to deposit. He points out that the premises are at Mahalaxmi and in the same building, the respondent landlord has licensed premises to ICICI bank at the rate of Rs.125/- per sq. ft. per month. On these basis, he submits that the reasonable compensation would come to Rs.2,18,000/- in respect of the suit premises. Learned counsel for the applicant categorically states that he has no submissions to make as regards the quantum of reasonable compensation and he applies for some time in this regard.

5] Considering the facts of the present case, the applicant is required to pay costs which are assessed at Rs.1,00,000/- (Rupees One Lakh) for restoration. Further, the reasonable compensation, even on *ad hoc* basis is determined at Rs.1,00,000/- (Rupees One Lakh) per month. No doubt, the parties will be at liberty to place material on record to satisfy this Court that the reasonable

1 (2005) 1 SCC 705

2 2009 (5) ALL MR 1001

compensation amount should be varied. However, considering that the premises are at Mahalaxmi and further, the premises admeasure 1750 sq. ft. and are used for commercial purposes, the direction for deposit of Rs.1,00,000/- (Rupees One Lakh) per month is made. At this stage, the deposit is not ordered from the date of the eviction decree which was made in the year 2011. However, it will be only appropriate that the deposit is ordered from 1st January 2017.

6] This civil application is therefore allowed conditionally. CRA and the interim order granted therein, is restored subject to the following conditions :-

- (A) That the applicant pays costs of Rs.1,00,000/- (Rupees One Lakh) to the respondents within a period of four weeks from today;
- (B) The applicant deposits in this Court arrears of compensation at the rate of Rs.1,00,000/- (Rupees One Lakh) per month with effect from 1st January 2017 within a period of four weeks from today;
- (C) The applicant continues to deposit in this Court compensation at the rate of Rs.1,00,000/- (Rupees One Lakh) per month on or before 5th day of each succeeding month as a condition for continuing in possession of the suit premises on the basis of the interim relief which is now restored.

7] The aforesaid determination is only on *ad hoc* basis. The parties shall be at liberty to file appropriate applications / affidavits / valuation reports / documents for determination of reasonable compensation amount within a period of four weeks from today.

8] Place the CRA for directions on 31st October 2017. If by date, the aforesaid conditions are complied with, then, this Court will consider fixing date for final hearing in the matter.

9] Civil Application is disposed of in the aforesaid terms.

10] At this stage, learned counsel for the applicant seeks for reduction of costs. It is to be noted that the applicant right from the year 2011 have been enjoying the possession of the suit premises without even depositing any reasonable compensation. Thus construed, the amount of Rs.1,00,000/- (Rupees One Lakh) imposed are on a very conservative basis. Accordingly, application for reduction of costs is rejected.

(M. S. SONAK, J.)

Chandka