

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11646 OF 2016

**Ambavi Raghu Patel & anr. : Petitioners.
versus
M/s. Ish Homes Private Limited & anr. : Respondents.**

**Mr. Subhash Bane for the Petitioners.
Mr. Khan Javed Akhtar for the Respondent No.1.**

**CORAM : R. M. SAVANT, J.
DATE : 13th APRIL 2017**

P.C.

1 The order dated 20/09/2016 passed by the Appellate Bench of the Small Causes Court fixing interim monthly compensation at the rate of Rs.40,000/- per month is taken exception to by way of the above petition.

2 The Petitioners are in Appeal against the decree passed by the trial Court dated 24/02/2015 in R.A.E. & R Suit No.584/934 of 2007. In the said Appeal, the Petitioner filed an Application numbered as Exhibit 7 for stay to the execution of the said decree. The Appellate Bench of the Small Causes Court in the earlier round by order dated 23/07/2015 had stayed the decree on the condition that the Petitioners to deposit an amount of Rs. 25,000/- as interim compensation per month from 01/03/2015. The said order dated 23/07/2015 was taken exception to by the Respondent No.1 by filing Writ Petition No.11752/2015. The said Writ Petition came to be allowed by order dated

10/08/2016 for the reasons mentioned in the said order and the matter came to be remanded back to the Appellate Bench of the Small Causes Court for a de-novo consideration of the aspect of fixing of interim compensation in terms of the directions as contained in the said order dated 10/08/2015. It is not necessary to go into the said reasons for the purpose of the present Petition.

3 Before the Appellate Bench of the Small Causes Court the Respondent No.1 herein had produced two valuation reports of valuer Kannaiya Vakharia which reports are dated 21/07/2015 and 02/09/2016 whereas on behalf of the Petitioners report of one M/s. Kakode Associates was produced. In so far as the said two reports of Kannaiya Vakharia are concerned, in the report dated 02/09/2016 Shri Vakharia has, after adopting the method of computing the monthly compensation that the premises would fetch, concluded by holding that the monthly compensation would be Rs.6,35,800/-. Whilst making the said calculation, the said valuer Shri Vakharia had taken into consideration the rates prevailing in respect of the commercial premises in the said area as Rs.635800/- per square meter for commercial user. In so far as the report produced on behalf of the Petitioner is concerned, the said report of M/s. Kakode Associates is based on the Leave and License Agreements dated 09/09/2010, 01/05/2014, 13/10/2015 and 15/06/2016. On the basis of the said material, the valuer M/s. Kakode Associates has concluded that the monthly compensation for the premises

would be in the sum of Rs.23998/- Since the said Leave and License Agreements were unregistered, the Appellate Bench of the Small Causes Court did not deem it appropriate to give credence to the said material. The Appellate Bench of the Small Causes Court, having regard to the fact that the rate per square meter was prevailing at Rs.635800/- has thereafter observed that the rate per square feet would be Rs.59067/- .

4 It is required to be noted that the premises are situated at Prabhadevi in the vicinity of the Siddhivinayak Temple. The premises have all amenities i.e. access from the road etc. Though the premises are situated in an old building, the Appellate Bench of the Small Causes Court, having regard to all the aforesaid factors, has deemed it appropriate to fix monthly compensation at Rs.40,000/- per month.

5 In my view, having regard to the fact that in terms of the said reports of Shri Kannaiya Vakharia wherein the valuer has concluded that the monthly compensation to be Rs.62730/- on the basis of the value of the premises and Rs.59067/- as per prevalent rate per square feet for the commercial premises as also having regard to the fact that the Appellate Bench of the Small Causes Court had earlier fixed compensation at the rate of Rs.25000/- per month, it would be just and proper to fix the interim compensation at Rs.35,000/- per month for the suit premises. The said

compensation at the said rate would be payable by the Petitioners pending their Appeal in the Small Causes Court. Save and except to the extent as aforesaid the impugned order dated 20/09/2016 is not interfered with. It is clarified that the rest of the directions in the impugned order would continue to apply. The arrears if any on account of the difference, to be deposited in the Small Causes Court within six weeks from date. With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]